

In the Matter of:

ESTATE OF PATRICK HARMON, SR., et al.

VS

SALT LAKE CITY CORPORATION, et al.

CLINTON FOX

June 17, 2022

**RED ROCK REPORTING**

P.O. BOX 3265  
SALT LAKE CITY, UT 84110  
385.707.7254

<p style="text-align: center;">IN THE UNITED STATES DISTRICT COURT                  STATE OF UTAH, CENTRAL DIVISION</p> <p style="text-align: center;">- - -</p> <p>ESTATE OF PATRICK HARMON, )                  SR.; PATRICK HARMON II, ) No. 2:19-cv-00553-HCN-CMR                  as Personal Representative )                  of the Estate of Patrick )                  Harmon, Sr., and heir of ) District Judge:                  Patrick Harmon Sr., TASHA ) Howard C. Nielsen, Jr.                  SMITH, as heir of Patrick )                  Harmon, Sr., ) Magistrate Judge:                  ) Cecilia Mr. Romero</p> <p style="padding-left: 40px;">Plaintiffs, )                  )                  vs. )                  )                  SALT LAKE CITY CORPORATION, )                  a municipality; and OFFICER )                  CLINTON FOX, in his )                  individual capacity, )                  )                  DEFENDANTS. )</p> <p style="text-align: center;">-----</p> <p style="text-align: center;">DEPOSITION OF                  CLINTON FOX                  DEISS LAW                  SALT LAKE CITY, UTAH                  JUNE 17, 2022</p>	<p style="text-align: right;">Page 3</p> <p>1 CLINTON FOX, WITNESS                  2 INDEX OF EXAMINATION PAGE                  3 Examination by Mr. Lutz 5                  4 Reporter Certificate 209                  5 Witness Certificate 211                  6                  7 INDEX OF EXHIBITS                  EXHIBIT PAGE</p> <p>8                  No. 8 Training Report History Bates-stamped 51                  SLCC000561-573                  9                  10 No. 9 Compilation of Photos and General 66                  Offense Reports Bates-stamped                  SLCC000576-000603                  11                  12 No. 10 Taser X26P CEW User Manual 88                  13 No. 11 Salt Lake City Police Department Polices 112                  and Procedures Manual                  14                  No. 12 Hand Drawn Diagram 132                  15                  No. 13 Salt Lake City Police Department General 156                  16 Offense Hardcopy Bates-stamped                  SLCC000121                  17                  No. 14 Color Photo Bates-stamped SLCC001590 162                  18                  No. 15 Color Photo Bates-stamped SLCC001592 167                  19                  No. 16 Color Photo Bates-stamped SLCC001619 168                  20                  No. 17 Color Photo Bates-stamped SLCC001610 168                  21                  No. 18 Internal Affairs Unit Complaint 178                  22 Disposition Form Bates-stamped                  SLCC000635                  23                  No. 19 Police Department Memorandum 180                  24 Bates-stamped SLCC000647-648                  25</p>
<p style="text-align: right;">Page 2</p> <p>1 APPEARANCES OF COUNSEL:                  2 FOR PLAINTIFFS:                  3 Nicholas A. Lutz                  RATHOD MOHAMEDBHAI, LLC                  4 2701 Lawrence Street, Suite 100                  Denver, Colorado 80205                  5 303.578.4400                  NL@rmlawyers.com                  6                  Corey D. Riley                  7 DEISS LAW PC                  10 West 100 South, Suite 425                  8 Salt Lake City, Utah 84101                  801.433.0226                  9 801.433.0226                  10                  11 FOR DEFENDANTS:                  12 Katherine Nichols                  SALT LAKE CITY ATTORNEY'S OFFICE                  13 35 East 500 South, Second Floor                  Salt Lake City, Utah 84111                  14 385.468.7900                  Katherinenichols@slcgov.com                  15                  16                  17                  18                  19                  20                  21                  22                  23                  24                  25</p>	<p style="text-align: right;">Page 4</p> <p>1 INDEX OF EXHIBITS (Cont.)                  EXHIBIT PAGE</p> <p>2                  No. 20 Internal Affairs Case Routing and Flow 180                  Bates-stamped SLCC000652                  3                  4 No. 21 Body Cam Footage Bates-stamped HARMON24 183                  5 No. 22 Body Cam Footage Bates-stamped HARMON28 190                  6 No. 23 Body Cam Footage Bates-stamped HARMON36 195                  7                  8                  9                  10                  11                  12                  13                  14                  15                  16                  17                  18                  19                  20                  21                  22                  23                  24                  25</p>

Page 5	Page 7
<p>1 SALT LAKE CITY, FRIDAY, JUNE 17, 2022, 9:08 A.M.</p> <p>2 - - -</p> <p>3 CLINTON FOX,</p> <p>4 called as a witness herein, having been first duly</p> <p>5 sworn, was examined and testified as follows:</p> <p>6 EXAMINATION</p> <p>7 BY MR. LUTZ:</p> <p>8 Q. Good morning, Officer.</p> <p>9 A. Good morning.</p> <p>10 Q. I introduced myself off record, but I will</p> <p>11 say it again. For the record, I'm Nick Lutz. I'm the</p> <p>12 attorney for the Plaintiffs which are Patrick Harmon</p> <p>13 II, Tasha Smith, and the Estate of Patrick Harmon.</p> <p>14 I'll be taking your deposition today.</p> <p>15 Have you ever been deposed before?</p> <p>16 A. I've been present for one deposition, but it</p> <p>17 was not mine. It was my wife's.</p> <p>18 Q. Okay. What sort of case was that?</p> <p>19 A. It was for like a traffic accident.</p> <p>20 Q. Okay. You've testified in court?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. So I assume you're going to be pretty</p> <p>23 familiar with this process, but I'm just going to go</p> <p>24 through kind of procedural background. So because we</p> <p>25 have a court reporter here taking down everything we</p>	<p>1 truth?</p> <p>2 A. No.</p> <p>3 Q. Okay. I'm sure you saw this in your wife's</p> <p>4 deposition. Occasionally Ms. Nichols's, your attorney,</p> <p>5 will object to the questions that I ask. As a general</p> <p>6 rule, you can still answer the question and you still</p> <p>7 have to answer the question. The exception is if she</p> <p>8 tells you not to. And these are generally going to be</p> <p>9 matters of attorney-client privilege or things like</p> <p>10 that.</p> <p>11 So I never want to know -- she's your</p> <p>12 attorney. Yeah, I never want to know what you two</p> <p>13 discussed or what you discussed with your other</p> <p>14 attorneys in this case. So if she objects on that</p> <p>15 basis, she'll instruct you not to answer and you will</p> <p>16 follow. Make sense?</p> <p>17 A. Yes.</p> <p>18 Q. When were you made aware that we would be</p> <p>19 taking your deposition today?</p> <p>20 A. Maybe a month ago. I don't remember.</p> <p>21 Q. Okay. And since that time, what have you</p> <p>22 done to prepare for today?</p> <p>23 A. Met with my attorney.</p> <p>24 Q. Okay. How many times?</p> <p>25 A. I'd say twice.</p>
Page 6	Page 8
<p>1 say, it's important for the transcript and the record</p> <p>2 that we don't talk over one another, so I will wait for</p> <p>3 you to finish your answer before I ask another question</p> <p>4 and if you could just do the same, that would be great.</p> <p>5 It's also important to give verbal answers, so gestures</p> <p>6 and things that aren't words like mms don't come across</p> <p>7 well on the record. So if we could avoid those, that</p> <p>8 would be great.</p> <p>9 So right before we began, the court reporter</p> <p>10 swore you in and had you take an oath; right?</p> <p>11 A. (Nods head.)</p> <p>12 Q. Can I get a verbal answer.</p> <p>13 A. Yes.</p> <p>14 Q. And you understand that that's the same oath</p> <p>15 that you would take in any court of law when you're</p> <p>16 testifying under --</p> <p>17 A. Yes.</p> <p>18 Q. -- penalty of perjury?</p> <p>19 A. Yes.</p> <p>20 Q. Are you suffering from any illness or other</p> <p>21 condition that could make it difficult to testify</p> <p>22 today?</p> <p>23 A. No.</p> <p>24 Q. Okay. Under the influence of any medications</p> <p>25 or anything that would impair your ability to tell the</p>	<p>1 Q. Okay. When?</p> <p>2 A. Once earlier this week, and I don't know if</p> <p>3 it was necessarily in preparation for the deposition,</p> <p>4 but once a few weeks ago.</p> <p>5 Q. Okay. Did you review any documents?</p> <p>6 A. Like as far as paperwork and stuff?</p> <p>7 Q. Anything that you might have reviewed to</p> <p>8 prepare for today.</p> <p>9 A. Yes.</p> <p>10 Q. What did you review?</p> <p>11 A. The body cam footage and I think the, I don't</p> <p>12 know if it counts, the inquiries or whatever the papers</p> <p>13 that you had sent over once before.</p> <p>14 Q. Interrogatories?</p> <p>15 A. Interrogatories. That's what it is.</p> <p>16 Q. Yeah. What body cam footage?</p> <p>17 A. Mine, Kris's, and Scott's.</p> <p>18 Q. How many times would you say you reviewed the</p> <p>19 footage?</p> <p>20 A. The other day.</p> <p>21 Q. Let's start there.</p> <p>22 A. I think we just watched through each video</p> <p>23 twice. We kind of rewound a couple of parts a couple</p> <p>24 of times. I'm not sure if I could put a number on how</p> <p>25 many times the little clips, but twice at least.</p>

<p style="text-align: right;">Page 9</p> <p>1 Q. Okay. Since the incident that we're here 2 today, how many times would you say you watched the 3 body camera footage from the incident? 4 A. I don't know that there's any way I could put 5 a number on it. I tried not to as often as possible, 6 and so it's not a lot, but it could be anywhere from 10 7 to 15. 8 Q. Okay. And have you watched -- does that 9 apply to all three? 10 A. I would say Scott specifically only a couple 11 of times. Kris's is the clearest. That's probably the 12 one where somewhere between 10 and 15, and even my own 13 is 5 or less probably. 14 Q. Okay. Are you still working for the Salt 15 Lake City Police Department? 16 A. I am. 17 Q. In what capacity? 18 A. Just patrol. I work at the airport. 19 Q. Is that the same capacity that you were 20 working in in 2017? 21 A. No. 22 Q. Were you promoted, transferred? What 23 happened there? 24 A. I've been transferred three times since. 25 Q. Okay. What made you want to have a career in</p>	<p style="text-align: right;">Page 11</p> <p>1 appropriate. 2 Q. Yeah's okay. 3 A. Okay. 4 Q. Do you mind if I ask how old you are? 5 A. I'm 40. 6 Q. Were you ever deployed during your time in 7 the Marine Corps? 8 A. Yes. 9 Q. Where? 10 A. I was deployed in supportive operations while 11 I'm in MEU in 2001. I was deployed to Kuwait in 2003 12 for the beginning of the year after the war and I was 13 deployed to Ramadi in 2000 -- sorry. After my 14 deployment to -- for the beginning of the war I was 15 deployed to the Republic of Georgia for training 16 operation and then I came back from that and I deployed 17 to Iraq in Ramadi in 2004. 18 Q. How long did those deployments last? 19 A. Anywhere from six to seven months. It 20 wouldn't be any longer than seven months. 21 Q. I'm not sure. What was your initial title in 22 the Marine Corps? 23 A. I was just in infantry. 24 Q. Were you ever promoted? 25 A. Yes.</p>
<p style="text-align: right;">Page 10</p> <p>1 law enforcement? 2 A. Just kind of one of those hero kid things I 3 think, right. Just growing up as a kid it was either 4 military or law enforcement. 5 Q. And did you join the military? 6 A. I did. 7 Q. Can you kind of walk me through what led you 8 to that. 9 MS. NICHOLS: Objection, vague. 10 THE WITNESS: Same thing. Just as a kid, 11 family-type thing. 12 Q. (BY MR. LUTZ) When did you enlist? 13 A. I enlisted in 2019. 14 Q. What branch? 15 A. Marine Corps. 16 Q. And how long were you -- or how long did you 17 serve? 18 A. Six years active duty and just under maybe 19 just exactly a full year as a reservist. 20 Q. Okay. What did you do before the military? 21 A. High school. 22 Q. Straight through? 23 A. Yeah. 24 Q. Okay. 25 A. Yeah. Yes. Sorry. I don't know if yeah is</p>	<p style="text-align: right;">Page 12</p> <p>1 Q. Can you walk me through any of the promotions 2 that you had in the Marine Corps as in -- 3 A. To, like, how I got promoted or to what rank? 4 Q. Ranks and at what time you achieved that 5 rank. 6 A. So in boot camp I was -- I had two 7 meritorious promotions going from PFC. I guess it goes 8 Private to PFC, PFC to Lance Corporal, so I left boot 9 camp as a Lance Corporal. I was promoted to Corporal 10 at -- I graduated in 2000. By the time I was on flow 11 in 2001 I was a corporal, so that was within a year, 12 year and a half-ish, and then I was promoted to 13 Sergeant after -- almost right after my last deployment 14 in 2004. So either earlier mid 2004 to 2005-ish. 15 Q. Is it common to be promoted in rank during 16 boot camp? 17 A. Not necessarily during boot camp, but right 18 after boot camp, yes. 19 Q. Okay. 20 A. Yeah. 21 Q. In any of these deployments did you see 22 combat? 23 A. Yes. 24 Q. And which ones? 25 A. So definitely the last one, the one that I</p>

<p style="text-align: right;">Page 13</p> <p>1 was in Ramadi. The one where we were at the beginning,                  2 I believe that it was qualified for a combat action,                  3 but I don't know that it would meet my qualifications.                  4 I don't know what definition somebody could or would                  5 use, but I believe the company I was with got approved                  6 for a combat action ribbon, so technically it would be                  7 those two.                  8 Q. Okay. I would use your definition.                  9 A. Yeah. It would -- it would -- the first one                  10 was not really -- we took a couple of pot shots and a                  11 rocket hit near our base, and that was about the extent                  12 of it. That qualified, but I didn't think that it did.                  13 I did at the time and then the second go around in                  14 Ramadi I was like oh, that's what actual combat looks                  15 like. So it was different.                  16 Q. What was the mission in Ramadi?                  17 A. We were the force protection unit for Camp                  18 Blue Diamond which was right outside of Camp Ramadi                  19 which is right outside the City of Ramadi. So anything                  20 that had to do with any kind of base security, force                  21 security, doing convoy securities, anything like that                  22 we were in charge of that.                  23 Q. What did an average day look like there?                  24 A. Long. Pretty much for about the extent of                  25 the full six months we had two operations a day.</p>	<p style="text-align: right;">Page 15</p> <p>1 stitches in the back of my leg and couldn't do anymore                  2 walking for a couple of weeks.                  3 Q. What happened there?                  4 A. I got tangled up in the concertina wire                  5 during a mortar attack.                  6 Q. Bad injury?                  7 A. It looked gruesome, but it wasn't really bad.                  8 It was all superficial. Pretty much stitches cleaned                  9 it up.                  10 Q. So did they take you off duty for a little                  11 while for that?                  12 A. Off duty is a hard term when you're in a                  13 place like that, so, yeah, I wasn't leaving the base                  14 and I wasn't doing patrols anymore, but I was still                  15 expected to work if that makes sense.                  16 Q. Okay. Did you ever discharge your weapon?                  17 A. Yes.                  18 Q. How many times?                  19 A. There's no way to know. I have no idea.                  20 Q. Many times?                  21 A. Many times.                  22 Q. And I guess we're just talking about Ramadi                  23 right now?                  24 A. At no point other than that did I discharge                  25 my weapon, so only in Ramadi.</p>
<p style="text-align: right;">Page 14</p> <p>1 Either one is going to be a foot patrol or one would be                  2 a convoy unless the convoys took more than half a day                  3 at which point we would just do the convoy and then try                  4 to get sleep and then start the rotation again the                  5 second day.                  6 Q. What's involved in the foot patrol?                  7 A. So pretty much the planning process is going                  8 to be a few hours, right, of planning, figuring out                  9 what is going to be the purpose of what we want to go                  10 and accomplish that day. If it's either just a show of                  11 force in a particular neighborhood, if it was                  12 reconnaissance of something that we wanted to do in the                  13 future, something like that.                  14 It just depended upon kind of what the end                  15 mission was, right. Like, I mean, you don't just                  16 necessarily do it for no reason. You gotta have that                  17 reason. So if the operation line would give us                  18 whatever reason they wanted us to do, or if there were                  19 an objective, we would tailor that foot patrol to that                  20 objective.                  21 Q. How often did you do reconnaissance work?                  22 A. I mean, I don't know. For the six months it                  23 was -- it was, at minimum, one to two foot patrols a                  24 day, so, I mean, however many you can do in a day. I                  25 had only a couple weeks off when I ended up with</p>	<p style="text-align: right;">Page 16</p> <p>1 Q. Like --                  2 A. Or other areas surrounding Iraq. Again, I                  3 can't -- you could go weeks without doing it and then                  4 you could go a couple of days with just bad things                  5 happening, so.                  6 Q. Remind me what time period this was.                  7 A. So in 2004. I deployed in July of 2004 and I                  8 came home sometime December to January-ish.                  9 Q. Okay. At that time Ramadi was an active war                  10 zone?                  11 A. It was.                  12 Q. Basically?                  13 A. Yeah.                  14 Q. Okay. Can you tell me about your work with                  15 protecting convoys.                  16 A. Like what specifically?                  17 Q. Just describe to me what that entailed.                  18 A. So, I mean, it depends on what unit we were                  19 doing the security for. Most -- so you got Motor T.                  20 Motor T are the truck divers and they're the ones that                  21 are going to manage their own trucks, right. Some of                  22 those trucks have guns on them. They have some of                  23 their own people that are armed and have, like, ready                  24 response teams.                  25 As the infantry unit, our sole responsibility</p>

<p style="text-align: right;">Page 17</p> <p>1 is to -- if we make contact, we would either try to                  2 protect or, you know, engage to take, you know, the                  3 brunt of that so that we could get them off the exit                  4 and we could actually get them back on their way and                  5 out of the way, and then we could either (a) deal with                  6 a response of like trying to go after the people that                  7 were attacking our convoys or just continue to move on                  8 with the convoy.                  9 But we would -- anything that took us away                  10 from the convoy, it would be to go and either counter                  11 an assault that was against us or to go and try to stop                  12 something that was happening to the convoy itself.                  13 Q. In your work protecting convoys, were you                  14 ever fired upon?                  15 A. Yes.                  16 Q. How many times?                  17 A. I don't know.                  18 Q. Too many to count?                  19 A. Yeah. I mean, I couldn't put a number on it.                  20 Q. And forgive me if I'm taking you back to a                  21 time you don't remember fondly, but was it like a                  22 monthly occurrence?                  23 A. Yeah, like the same thing. I mean, we could                  24 go days or weeks and it's -- and it turns boring and                  25 it's mundane, and then just, you know, all the sudden</p>	<p style="text-align: right;">Page 19</p> <p>1 was your next professional move?                  2 A. So I immediately started -- or tried selling                  3 cars for a dealership there in my hometown.                  4 Q. Where was that?                  5 A. In Tooele.                  6 Q. Which is here in Utah --                  7 A. Yeah.                  8 Q. -- I've learned.                  9 A. Yes.                  10 Q. How far away is it from here?                  11 A. 37, 38 miles.                  12 Q. Okay. How long did that last?                  13 A. Only a handful of months.                  14 Q. And what was next?                  15 A. After that I got hired, I was basically                  16 building and repairing, upgrading cellphone towers, so.                  17 Q. What company?                  18 A. Called Western Telecom.                  19 Q. How long did that last?                  20 A. Year and a half I think. I think.                  21 Q. So at this point, your post military career,                  22 were you still trying to figure out what you wanted to                  23 do next?                  24 A. No. I knew I wanted to become a cop, but                  25 being a police officer is very organized, uniform,</p>
<p style="text-align: right;">Page 18</p> <p>1 they had a happy weekend and they wanted to do crazy                  2 stuff for a few days or something, you know. It just                  3 didn't matter. There was no rhyme or reason to it.                  4 You get, you know, you could go a while without seeing                  5 anything and then you could all the sudden it'd be like                  6 oh, wow, this has been a crappy two days, you know. So                  7 it just depends.                  8 Q. Okay. Did you receive any accommodations                  9 during your time in the military?                  10 A. Just like a good conduct medal, combat                  11 ribbon, stuff like that, but nothing beyond the -- kind                  12 of the basics.                  13 Q. Any other awards? Anything like that?                  14 A. No.                  15 Q. So you left the military what year?                  16 A. 2005 I think.                  17 Q. Why did you decide to move on?                  18 A. I wanted to get married. I had a girlfriend                  19 and the rate of deployments was too much.                  20 Q. Sure. Were you with your girlfriend the                  21 whole time for all of your deployments?                  22 A. Three of them.                  23 Q. That's a lot.                  24 A. It was.                  25 Q. So after you came out of the military, what</p>	<p style="text-align: right;">Page 20</p> <p>1 haircut, you know, have to shave, have to -- or we used                  2 to have to shave, and I wanted a break from kind of                  3 that real rigid type lifestyle, so I just -- I think it                  4 was maybe a total of two years maybe-ish.                  5 Q. Okay. This beard policy changed between the                  6 incident and today, didn't it?                  7 A. Yes.                  8 Q. Officer Smith also has a significant beard                  9 now.                  10 A. His is very phenomenal, mine is not, I would                  11 argue, yeah.                  12 Q. So what other jobs were you doing during this                  13 period?                  14 A. That's it.                  15 Q. And when did you first apply for a law                  16 enforcement position?                  17 A. I think it was 2008 and my first job I                  18 applied for within law enforcement was to be a                  19 dispatcher.                  20 Q. For what agency?                  21 A. The Tooele County Sheriff's Office.                  22 Q. Okay. And were you hired into that job?                  23 A. Yes, I was.                  24 Q. How long did you work in that capacity?                  25 A. Roughly, 11 months.</p>



<p style="text-align: right;">Page 21</p> <p>1 Q. And what does dispatch involve?</p> <p>2 A. Sitting, staring at computer screens, typing</p> <p>3 much like she's doing, and basically handling all the</p> <p>4 communication from any of the officers, fire EMTs, or</p> <p>5 anybody that uses the dispatch service, being the radio</p> <p>6 communications back and forth.</p> <p>7 Q. Okay. Are you taking -- you're not taking</p> <p>8 911 calls?</p> <p>9 A. Yes, I was.</p> <p>10 Q. Okay. And then directing those out to the?</p> <p>11 A. Yeah, I mean, you would rotate through the</p> <p>12 different posts throughout the shift, right. So it was</p> <p>13 12-hour shifts for Tooele County, so I would either be</p> <p>14 doing fire EMS calls or like, you know, anybody can</p> <p>15 take the 911 calls, especially if we're getting busy or</p> <p>16 we're just taking regular nonemergency phonecalls</p> <p>17 dispatching for fire, dispatching for police,</p> <p>18 dispatching for the different agencies or whatever.</p> <p>19 We usually had I think it was like crews of</p> <p>20 four and then it just depended on the position what you</p> <p>21 were doing at that time.</p> <p>22 Q. Did you enjoy that work?</p> <p>23 A. Not really.</p> <p>24 Q. Was it sort of a foot in the door --</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 23</p> <p>1 A. Yeah. So there's, you know, a handful of</p> <p>2 different postings. You do work within the jail,</p> <p>3 right, so you either intake, processing, housing. If</p> <p>4 you're working with the, kind of the day workers that</p> <p>5 would do like the laundry or the cooking or whatever,</p> <p>6 you know, it just depended on what you would do.</p> <p>7 So, I mean, if you're in intake, anybody that</p> <p>8 gets arrested you're coming, you're searching and</p> <p>9 entering them into the system, and you could be doing</p> <p>10 both the intake and assisting with processing or vice</p> <p>11 versa. So once you process -- or once you intake them</p> <p>12 in, they get put into a holding cell and then you gotta</p> <p>13 actually book them, right.</p> <p>14 So you go through the whole process of</p> <p>15 booking them into the jail, allowing them to have the</p> <p>16 phonecall with their attorneys. And then if they</p> <p>17 either (a) don't bail out or it's not something they're</p> <p>18 going to get OR'd for, then we would house them, and</p> <p>19 then that's where the housing officer and the inmates</p> <p>20 working with the trustees will kind of take over at</p> <p>21 that point.</p> <p>22 If you're the housing guy, then you're just</p> <p>23 basically waiting for them to get housed. You gotta</p> <p>24 bring them in, you put them in their cells, you make</p> <p>25 sure they're in all the logs, start kind of doing all</p>
<p style="text-align: right;">Page 22</p> <p>1 Q. -- kind of thing?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. How long -- I think I've seen your job</p> <p>4 history. How long before you moved into your next</p> <p>5 position?</p> <p>6 A. I was a dispatcher for about 11 months.</p> <p>7 Q. And what was your next position?</p> <p>8 A. I was a corrections officer for the same</p> <p>9 agency.</p> <p>10 Q. Were you working out of the same facility</p> <p>11 there?</p> <p>12 A. It's the same building, just a different</p> <p>13 office type thing.</p> <p>14 Q. Okay. What led you to apply for that</p> <p>15 particular position in corrections?</p> <p>16 A. Just one step closer being on patrol.</p> <p>17 Q. Patrol was always the goal?</p> <p>18 A. Yes. Yes.</p> <p>19 Q. How long did you stay in your position as a</p> <p>20 corrections officer?</p> <p>21 A. Almost exactly two years.</p> <p>22 Q. Was that a better experience than dispatch?</p> <p>23 A. Yeah, much so.</p> <p>24 Q. Can you tell me what an average day was like</p> <p>25 as a corrections officer.</p>	<p style="text-align: right;">Page 24</p> <p>1 that stuff.</p> <p>2 Q. You said OR'd?</p> <p>3 A. Own cognizance, so yeah.</p> <p>4 Q. So cognizance, bond released?</p> <p>5 A. Yeah, pretty much. Where they don't have to</p> <p>6 pay any money or whatever it is. They're just OR.</p> <p>7 Q. And you said trustee. What does that mean?</p> <p>8 A. So, you know, the jail works with a lot of</p> <p>9 the inmates that can have jobs within the facility and</p> <p>10 they have the ability to kind of work off some of their</p> <p>11 time, so I don't know why they call it a trustee, but</p> <p>12 the trustees are just people that have proven that they</p> <p>13 have the capability of working and we can pull them out</p> <p>14 of their cells, trust them to go and do the laundry, do</p> <p>15 that kind of stuff and they can work off their time and</p> <p>16 it kind of benefits them, benefits us.</p> <p>17 Q. Okay. At some point during your work as a</p> <p>18 corrections officer there in the jail, did you meet</p> <p>19 Scott Robinson?</p> <p>20 A. No.</p> <p>21 Q. Or Kris Smith?</p> <p>22 A. No.</p> <p>23 Q. We'll come back to that.</p> <p>24 A. Okay.</p> <p>25 Q. So I take it that I think you said it was --</p>

<p style="text-align: right;">Page 25</p> <p>1 that position was better than dispatch, but still not</p> <p>2 the goal, so --</p> <p>3 A. Right.</p> <p>4 Q. -- were you ever going to stay there</p> <p>5 longterm?</p> <p>6 A. I mean, if I had to, I probably would have,</p> <p>7 but no. The goal was to definitely get to patrol.</p> <p>8 Q. Okay. Did you ever need to use force on the</p> <p>9 inmates there?</p> <p>10 A. I think only a couple of times, but yeah.</p> <p>11 Q. How many times would you say?</p> <p>12 A. I have no idea.</p> <p>13 Q. Less than five?</p> <p>14 A. Probably more than five.</p> <p>15 Q. Less than ten?</p> <p>16 A. Maybe. I don't know. I mean, honestly, I</p> <p>17 don't know. It's two years' worth and I -- I don't</p> <p>18 know. I mean, it could be anywhere from -- I would say</p> <p>19 probably no more than 10 to 15-ish if you want to guess</p> <p>20 a number, yeah.</p> <p>21 Q. While you were there, was there a reporting</p> <p>22 requirement for a use of force instance kind of the</p> <p>23 same way there is when you're a patrol officer?</p> <p>24 A. I mean, yes and no there was some. It</p> <p>25 depends on what the qualification is for use of force.</p>	<p style="text-align: right;">Page 27</p> <p>1 Were some officers carrying tasers?</p> <p>2 A. So the sergeant might have had the taser. I</p> <p>3 don't think I had a taser. I don't remember where the</p> <p>4 taser would be held, honestly. I don't remember. I</p> <p>5 know that we had access to a taser, so, yeah, I</p> <p>6 think -- that was either with a sergeant, but I don't</p> <p>7 think we had them. Maybe it was staged in the housing</p> <p>8 unit. I don't remember. Sorry.</p> <p>9 Q. Did you ever have to use the taser while you</p> <p>10 were working there?</p> <p>11 A. Not while I was in corrections, no.</p> <p>12 Q. Did you ever have inmates file grievances</p> <p>13 against you?</p> <p>14 A. I think so, yes.</p> <p>15 Q. Do you know how many?</p> <p>16 A. No.</p> <p>17 Q. Do you remember the circumstances of any of</p> <p>18 them?</p> <p>19 A. I remember -- the one that I remember the</p> <p>20 most was a female that filed a grievance because she</p> <p>21 was violating some of the jail policies and so I</p> <p>22 basically put her in what they call lockdown which if</p> <p>23 they're in a unit that's open and they have their</p> <p>24 jail -- the cell open, right, and they have the freedom</p> <p>25 to come in and out, use the day room, use everything</p>
<p style="text-align: right;">Page 26</p> <p>1 If we had people that was during intake, they were</p> <p>2 becoming aggressive and we ended up having to, you</p> <p>3 know, either pin them against the wall or use the wrist</p> <p>4 lock, twist lock, stuff like that, we didn't</p> <p>5 necessarily have to write a report for that, no.</p> <p>6 I think, you know, I was there when one</p> <p>7 inmate got tased. I think that the initial officer</p> <p>8 wrote a report for that, but, like, I wouldn't write a</p> <p>9 report for that.</p> <p>10 Q. Okay. In terms of I guess weapons, what were</p> <p>11 you -- what would you carry in the jail?</p> <p>12 A. Nothing.</p> <p>13 Q. At all?</p> <p>14 A. I had OC, but no knives, no guns, no nothing.</p> <p>15 Q. Handcuffs?</p> <p>16 A. I think I had handcuffs, yeah.</p> <p>17 Q. What else would be on your duty belt?</p> <p>18 A. Radio.</p> <p>19 Q. Okay.</p> <p>20 A. That's pretty much it.</p> <p>21 Q. Were there weapons available in the facility?</p> <p>22 A. Like an armory rack or something?</p> <p>23 Q. Sure.</p> <p>24 A. No.</p> <p>25 Q. You mentioned somebody was tasered once.</p>	<p style="text-align: right;">Page 28</p> <p>1 else, if they get that freedom taken away, it's called</p> <p>2 lockdown where they just basically have to go into</p> <p>3 their cell and they have to shut the door and they</p> <p>4 don't get the opportunity to kind of use the day room</p> <p>5 as everybody else does. She didn't agree with it.</p> <p>6 Q. Was that 23-hours a day lockdown?</p> <p>7 A. No. So it would have been, I mean, it could</p> <p>8 have been halfway through the day and then at the end</p> <p>9 of the night, I mean, it basically would rotate it over</p> <p>10 the next morning and add, you know, like 0700 or 0800.</p> <p>11 Whenever they opened the cells and had everybody come</p> <p>12 out, she would then have had the opportunity to come</p> <p>13 out.</p> <p>14 Q. Okay. Do you remember her name?</p> <p>15 A. I think it was Nicole, but I don't remember</p> <p>16 for sure.</p> <p>17 Q. At any time were you the subject of</p> <p>18 disciplinary action while you worked at the jail?</p> <p>19 A. No.</p> <p>20 Q. Any other grievances that you can tell me</p> <p>21 about?</p> <p>22 A. No. I mean, I'm sure that there were some.</p> <p>23 You know, when you work housing, a lot of the guys get</p> <p>24 mad at you and they file grievances as often as they</p> <p>25 can. So I know there are probably some, but I don't</p>



<p>Page 29</p> <p>1 remember any specific. The only reason I remember that</p> <p>2 one specific is she really hated me after that.</p> <p>3 Q. Was she housed there for some time?</p> <p>4 A. Yes, she was. She was a frequent flier at</p> <p>5 the jail, yeah.</p> <p>6 Q. When did you apply for your next law</p> <p>7 enforcement position?</p> <p>8 A. Like I said, it was almost exactly two years</p> <p>9 in the jail.</p> <p>10 Q. And what was the next position?</p> <p>11 A. Just patrol with the same agency.</p> <p>12 Q. The sheriff's department?</p> <p>13 A. Yeah.</p> <p>14 Q. When you were working as a corrections</p> <p>15 officer, were you technically a sheriff's deputy?</p> <p>16 A. I mean, I guess, yeah. I mean, we were</p> <p>17 working underneath the authority from the sheriffs at</p> <p>18 the sheriff's office, so if corrections officers are</p> <p>19 qualified as deputies, whatever the definition of a</p> <p>20 deputy would be, I guess yeah.</p> <p>21 We just called ourselves corrections</p> <p>22 officers. There's corrections officers and then</p> <p>23 there's patrol deputies, so.</p> <p>24 Q. Were you POST certified at that time?</p> <p>25 A. Corrections certified which, through POST, is</p>	<p>Page 31</p> <p>1 would kind of partner up and hang out together, but we</p> <p>2 were always in our own cars. We never really worked</p> <p>3 two-man.</p> <p>4 Q. Can you tell me about the first major call</p> <p>5 you responded to in that position?</p> <p>6 A. Major as in like what?</p> <p>7 Q. What stands out to you as your first</p> <p>8 significant experience?</p> <p>9 A. It was either the first or the second day</p> <p>10 there was a lady that shot herself in the chest and</p> <p>11 then survived, crawled into her front room and was</p> <p>12 having foamy flood come out of her mouth in front of</p> <p>13 her kids which was pretty traumatizing for probably me</p> <p>14 and the kids.</p> <p>15 Q. What was the nature of the call you received?</p> <p>16 A. The husband was actually home. She drove</p> <p>17 into wherever she bought the gun from. It was a Bursa</p> <p>18 .380, she bought the gun brand new, box of bullets. I</p> <p>19 believe it was just lead, but it was jacketed lead, and</p> <p>20 drove home, parked in front of her house, loaded five</p> <p>21 or six rounds, I can't quite remember a hundred percent</p> <p>22 if that's accurate, but it was a couple -- it was more</p> <p>23 than the one that she needed.</p> <p>24 And she ended up pointing the gun at her</p> <p>25 chest, shot herself, missed her heart, punctured her</p>
<p>Page 30</p> <p>1 the same qualifying kind of agency or authority and</p> <p>2 they're the ones that give the ability for the state,</p> <p>3 right. So in the State of Utah you either have to have</p> <p>4 the POST certification or you'd be a cat 1 or cat 2.</p> <p>5 So cat 1 is LEO, cat 2 I think is corrections</p> <p>6 certified. And then there's a step though below that</p> <p>7 which can be bailiffs or other things.</p> <p>8 Q. Do you know what that stands for, SFO?</p> <p>9 A. Special functions officer.</p> <p>10 Q. So what year was it when you were hired as a</p> <p>11 patrol deputy?</p> <p>12 A. 2009, but I am not certain.</p> <p>13 Q. Okay. I think we have that somewhere in the</p> <p>14 documents.</p> <p>15 A. I think it was 2009.</p> <p>16 Q. Okay. And what were your duties in that</p> <p>17 position?</p> <p>18 A. Just regular patrol duties.</p> <p>19 Q. As in out on the streets, patrol car?</p> <p>20 A. Yeah. Yes.</p> <p>21 Q. Did you have your own car?</p> <p>22 A. Yes.</p> <p>23 Q. And did you work with a partner?</p> <p>24 A. Nobody did. Like partnered in a vehicle all</p> <p>25 the time? No. We had four-man crews and, I mean, we</p>	<p>Page 32</p> <p>1 lungs, exited, and she immediately decided that she did</p> <p>2 not want to hurt herself anymore, crawled inside,</p> <p>3 husband called, and we responded.</p> <p>4 Q. Did she survive?</p> <p>5 A. She survived that time, but I actually think</p> <p>6 that she did successfully end her life later. I never</p> <p>7 got confirmation if that was her or not, but I was told</p> <p>8 like that -- the other gentleman that was on the call</p> <p>9 with me who was my FTO at the time, we both were to the</p> <p>10 understanding that it was her that ended up actually</p> <p>11 successfully taking her life later.</p> <p>12 Q. Sorry to hear that. So that was day one or</p> <p>13 two?</p> <p>14 A. Yeah. If it wasn't the very first day, it</p> <p>15 was the second day I think.</p> <p>16 Q. That did not turn you off from the job?</p> <p>17 A. No.</p> <p>18 Q. Can you walk me through an average day as a</p> <p>19 patrol officer? Or patrol deputy, rather.</p> <p>20 A. So Tooele County does 12-hour shifts. If I</p> <p>21 check on -- technically they're from 5:00 to 5:00, but</p> <p>22 it was a well received courtesy to check on about 30</p> <p>23 minutes early so that way, right, if anybody kind of is</p> <p>24 going off and they have paperwork that they've got to</p> <p>25 get in, that they don't have to stay over if a call</p>

<p style="text-align: right;">Page 33</p> <p>1 comes up.</p> <p>2 So we don't have to quite go out, but we do</p> <p>3 go get coffee in the morning, right. Typically at</p> <p>4 4:30, 5:00 o'clock in the morning, not a lot of</p> <p>5 traffic, nobody's calling reporting things broken or</p> <p>6 anything yet. So we can go get coffee, go by the</p> <p>7 office, you get whatever you need to start the day, and</p> <p>8 then make sure your gas is -- or your truck is all</p> <p>9 gassed up.</p> <p>10 From there, you know, probably around</p> <p>11 8:00-ish, 9:00-ish things start picking up either doing</p> <p>12 traffic enforcement. If you want to do -- it's kind of</p> <p>13 whatever you wanted to do. You could go do traffic,</p> <p>14 you could go, you know, hang out in school zones if</p> <p>15 kids are walking to school. Calls start coming in</p> <p>16 about that time, so you start trying to keep up on</p> <p>17 that.</p> <p>18 And then, I mean, you just gotta -- the cycle</p> <p>19 repeats. You know, if you get dispatched to a call,</p> <p>20 you take it. If not, you go try to find either civil</p> <p>21 papers to serve with the sheriff's office, they do a</p> <p>22 lot of civil paper service. Yeah, it was 7200 square</p> <p>23 miles is the size of Tooele County, so if you felt so</p> <p>24 inclined and the sergeant would allow it, then you</p> <p>25 could have one guy go out to the west desert and do</p>	<p style="text-align: right;">Page 35</p> <p>1 taser?</p> <p>2 A. At the sheriff's office?</p> <p>3 Q. Uh-huh.</p> <p>4 A. I think once.</p> <p>5 Q. Do you remember that incident?</p> <p>6 A. Yes.</p> <p>7 Q. Can you tell me what happened?</p> <p>8 A. I was on -- so there was a overlap of being</p> <p>9 patrol, but where I was also assigned to the motor</p> <p>10 squad, so I would still just do basic patrol functions,</p> <p>11 just from a motorcycle. I had seen a vehicle, it was</p> <p>12 double parked. The passenger was acting very</p> <p>13 suspicious on the porch of the house they were double</p> <p>14 parked on, and the way that she came running off it</p> <p>15 seemed as if I had spooked her off the porch. So I</p> <p>16 didn't know what was going on, stopped the car for the</p> <p>17 offense of the double park.</p> <p>18 As soon as I walked up to the diver's window</p> <p>19 I could smell the odor of marijuana, so I ended up</p> <p>20 getting the owner's information which is actually the</p> <p>21 female in the passenger seat, got her out, started</p> <p>22 talking to her, asked her about the odor. She said she</p> <p>23 didn't have any idea what I was talking about and I</p> <p>24 told her all right, cool, I'm just going to, you know,</p> <p>25 put you in handcuffs real quick and I'm going to have</p>
<p style="text-align: right;">Page 34</p> <p>1 some patrolling out there if you wanted.</p> <p>2 Q. Okay. Tooele County, how would you say the</p> <p>3 crime rate is there?</p> <p>4 A. After having worked in Salt Lake,</p> <p>5 significantly lower than where I work now.</p> <p>6 Q. A little bit sleepier?</p> <p>7 A. A lot sleepier, yeah.</p> <p>8 Q. What sort of -- what sort of calls would you</p> <p>9 ordinarily be responding to?</p> <p>10 A. Any type of police related call. I mean, we</p> <p>11 did a lot of medicals because we'd roll with medical</p> <p>12 because we were kind of out there. We would</p> <p>13 potentially be closer than an ambulance, so we could</p> <p>14 respond and assist domestics. Traffic accidents were</p> <p>15 pretty heavy. DUIs, fights, disturbances. Really</p> <p>16 anything that you could think of.</p> <p>17 Q. Were you carrying a service weapon?</p> <p>18 A. Yes.</p> <p>19 Q. What else were you carrying when you were on</p> <p>20 duty?</p> <p>21 A. I carried a taser, carried OC, and I think at</p> <p>22 the sheriff's office I carried my ASP with me.</p> <p>23 Q. Which is like a baton?</p> <p>24 A. It's an expandable baton, yes.</p> <p>25 Q. How many times did you have to use your</p>	<p style="text-align: right;">Page 36</p> <p>1 you kind of hang out until I can get like a partner</p> <p>2 here, you know.</p> <p>3 And kind of the moment I said that, I went to</p> <p>4 actually put handcuffs on her, she started to fight.</p> <p>5 She tried punching me, clawing me. She actually tried</p> <p>6 to bite me at one point. I finally almost got her kind</p> <p>7 of like in a point where she was almost in custody and</p> <p>8 then her boyfriend came out. And they had a really big</p> <p>9 dog. It was a massive American Bulldog I think.</p> <p>10 And he came out of the car, dog was trying to</p> <p>11 get out of the car, so as I kind of engaged with him,</p> <p>12 she was able to get up, take off running. I took off</p> <p>13 running behind her, he took off running behind me, and</p> <p>14 then just now there was a two on one, she'd already</p> <p>15 physically assaulted me and everything, so I ended of</p> <p>16 tasing her and then he ended up -- seeing her get</p> <p>17 tased, he ended up giving up, and I was able to take</p> <p>18 them both into custody.</p> <p>19 Q. When was this?</p> <p>20 A. 2010. 2011 maybe. I'm not sure. It was</p> <p>21 right around there.</p> <p>22 Q. Tooele being a little sleepier, was a</p> <p>23 situation like that where you had to use physical force</p> <p>24 uncommon?</p> <p>25 A. Yeah, not nearly as common as when I worked</p>

<p style="text-align: right;">Page 37</p> <p>1 for Salt Lake where we deal with that on a pretty</p> <p>2 regular basis. It was somewhat uncommon for Tooele,</p> <p>3 yeah.</p> <p>4 Q. Were there other times when you had to use</p> <p>5 force on suspects?</p> <p>6 A. Yes.</p> <p>7 Q. How often did that happen?</p> <p>8 A. Not often at all at Tooele County.</p> <p>9 Q. Could you give me a ballpark of how many</p> <p>10 times you had to use force against -- use physical</p> <p>11 force against a suspect?</p> <p>12 A. Ten, twenty. Yeah, I can't, I mean, there's</p> <p>13 no way I could remember how many. No less than 10, no</p> <p>14 more than 20. Double that. Or 25, 30 maybe. Just</p> <p>15 depending. I don't know. Sorry.</p> <p>16 Q. Did the Tooele County Sheriff's Department</p> <p>17 have a use of force reporting requirement?</p> <p>18 A. Yes.</p> <p>19 Q. So in each of these you would have filled out</p> <p>20 a report?</p> <p>21 A. Oh, yes, for sure.</p> <p>22 Q. Any disciplinary action ever taken against</p> <p>23 you for an inappropriate use of force with the</p> <p>24 sheriff's department there?</p> <p>25 A. No.</p>	<p style="text-align: right;">Page 39</p> <p>1 A. Yeah.</p> <p>2 Q. When did you -- what was that position?</p> <p>3 A. Patrol.</p> <p>4 Q. When did you apply for it?</p> <p>5 A. So I got hired there 2013. I don't remember</p> <p>6 exactly when in 2013, but it was early. Yeah, 2013.</p> <p>7 Q. What inspired you to make that change?</p> <p>8 A. Tooele County was going broke and they</p> <p>9 actually said they were going to restructure our pay</p> <p>10 scale and take money away, so knowing that I wanted to</p> <p>11 be in law enforcement for a long time, I wasn't willing</p> <p>12 to take a pay cut, so I went to a new agency, better</p> <p>13 money.</p> <p>14 Q. Is West Valley a more populous area?</p> <p>15 A. By far, yes.</p> <p>16 Q. A little more excitement?</p> <p>17 A. Yeah.</p> <p>18 Q. How long were you there?</p> <p>19 A. Almost exactly three years. Apparently I'm</p> <p>20 really good at making it like right to the, like right</p> <p>21 on point.</p> <p>22 Q. Three to five years if you look?</p> <p>23 A. Yeah.</p> <p>24 Q. Okay. So your title was?</p> <p>25 A. Patrol Officer.</p>
<p style="text-align: right;">Page 38</p> <p>1 Q. What about complaints? Were you ever subject</p> <p>2 to citizen complaints for excessive use of force?</p> <p>3 A. No.</p> <p>4 Q. Would you always have been informed if a</p> <p>5 citizen filed a grievance or a complaint against you?</p> <p>6 MS. NICHOLS: Objection, calls for speculation.</p> <p>7 THE WITNESS: I don't know.</p> <p>8 Q. (BY MR. LUTZ) Just wondering if there was a</p> <p>9 policy?</p> <p>10 A. I don't know if there was a policy or not.</p> <p>11 Q. Okay. But to your knowledge, no citizen</p> <p>12 complaints?</p> <p>13 A. Yeah, to my knowledge.</p> <p>14 Q. And was it from -- directly from the Tooele</p> <p>15 County Sheriff's Department to Salt Lake City Police</p> <p>16 Department?</p> <p>17 A. No.</p> <p>18 Q. What was your next step?</p> <p>19 A. West Valley City.</p> <p>20 Q. Where is that?</p> <p>21 A. Just south of here.</p> <p>22 Q. Is that basically a suburb of Salt Lake City?</p> <p>23 A. Basically, yeah, I think you'd understand it</p> <p>24 that way.</p> <p>25 Q. Okay.</p>	<p style="text-align: right;">Page 40</p> <p>1 Q. Same as in Tooele. Well, I guess you were a</p> <p>2 deputy in Tooele.</p> <p>3 A. I mean, same job description, just different</p> <p>4 titles I think.</p> <p>5 Q. Did your duties change very much when you</p> <p>6 moved to West Valley?</p> <p>7 A. How so?</p> <p>8 Q. I'm just asking you if it was basically the</p> <p>9 same patrol kind of job?</p> <p>10 A. I mean, yeah, we weren't taking cows getting</p> <p>11 hit on the highway anymore, but other than that, the</p> <p>12 day to day like response to emergency type situations,</p> <p>13 anything like domestics and all that, yeah, same thing.</p> <p>14 Q. Okay. In your day to day in West Valley were</p> <p>15 you responding to more serious calls?</p> <p>16 A. Yes.</p> <p>17 Q. Can you kind of walk me through what the</p> <p>18 variety of calls you responded to?</p> <p>19 A. I mean, it would have been the same thing.</p> <p>20 Either domestics or fights. Significantly more, like,</p> <p>21 shots fired type calls. A lot more gang activity, so</p> <p>22 that kind of -- anything that would be gang related.</p> <p>23 We'd have to deal with a lot more, a lot more</p> <p>24 robberies. First time I ever handled a bank robbery,</p> <p>25 first time I was ever actually, I think, at a homicide</p>

<p style="text-align: right;">Page 41</p> <p>1 scene would have been at West Valley.</p> <p>2 Yeah, car jackings, all the, like, that all</p> <p>3 significantly increased. But, I mean, it's all pretty</p> <p>4 much like either, you know, crime or violent crime,</p> <p>5 kind of the same. Just who's doing it, how they're</p> <p>6 doing it is different, you know.</p> <p>7 Q. Did you enjoy the different environment?</p> <p>8 MS. NICHOLS: Objection, vague.</p> <p>9 MR. LUTZ: That's vague.</p> <p>10 Q. (BY MR. LUTZ) Were you more satisfied in a</p> <p>11 higher intensity environment?</p> <p>12 MS. NICHOLS: Objection, vague.</p> <p>13 You can answer.</p> <p>14 THE WITNESS: I mean, not really. It was -- I</p> <p>15 actually genuinely missed working for the sheriff's</p> <p>16 office. If they paid me better, I would probably still</p> <p>17 be there. Yeah, not -- I guess the answer would be no</p> <p>18 probably. Not anymore than what I was when I was at</p> <p>19 the sheriff's office, so it was equal.</p> <p>20 Q. (BY MR. LUTZ) Just to put a finer point on</p> <p>21 that, would you say that in West Valley, given it's</p> <p>22 more populous and the crime rate was higher, it was a</p> <p>23 higher intensity job than in Tooele?</p> <p>24 A. Yeah, I would -- yes.</p> <p>25 Q. Was that stressful?</p>	<p style="text-align: right;">Page 43</p> <p>1 where things were calm or quiet and then you would have</p> <p>2 a couple days that things weren't, but it was</p> <p>3 significantly more than Tooele.</p> <p>4 Q. And were you ever subject to disciplinary</p> <p>5 action for a use of force incident there?</p> <p>6 A. No.</p> <p>7 Q. Ever subjected to a disciplinary action for</p> <p>8 any other policy infraction?</p> <p>9 A. No.</p> <p>10 Q. Any citizen complaints against you?</p> <p>11 A. Not that I know of, but I -- I think somebody</p> <p>12 called a complaint about my driving on the way to work</p> <p>13 one day, but I don't even know for sure they did. I</p> <p>14 don't remember. I feel like that's a conversation I</p> <p>15 had with the sergeant at one point, but I don't</p> <p>16 remember for sure.</p> <p>17 Q. Possibly a driving complaint?</p> <p>18 A. Maybe. But I don't know.</p> <p>19 Q. Nothing sustained?</p> <p>20 A. No.</p> <p>21 Q. Did you ever have to use your taser when you</p> <p>22 were on duty in West Valley?</p> <p>23 A. Yes.</p> <p>24 Q. How many times?</p> <p>25 A. At least three, maybe four or five.</p>
<p style="text-align: right;">Page 42</p> <p>1 A. I never noticed it if it was, but I would</p> <p>2 imagine yeah. I mean, I'd probably say yeah.</p> <p>3 Q. That didn't bother you though?</p> <p>4 A. No.</p> <p>5 Q. In terms of your career, like as far as I can</p> <p>6 see so far, Tooele was almost like a break in the</p> <p>7 intensity from really high, you know, military, jail,</p> <p>8 Tooele, West Valley, and then Salt Lake and somewhere</p> <p>9 in there.</p> <p>10 A. Sure.</p> <p>11 Q. It's just interesting to me that you would</p> <p>12 also enjoy Tooele.</p> <p>13 A. Yeah. I love Tooele, yeah.</p> <p>14 Q. Do you still have family there?</p> <p>15 A. Yes.</p> <p>16 Q. Go back frequently?</p> <p>17 A. I still live there.</p> <p>18 Q. Oh, okay.</p> <p>19 A. Yeah.</p> <p>20 Q. Let's talk about use of force incidents in</p> <p>21 West Valley. How often were you involved in the use of</p> <p>22 force during your service in West Valley?</p> <p>23 A. There it was a significant uptake. I would</p> <p>24 say, minimum, every couple of weeks, every other week</p> <p>25 or so I guess. I mean, you could have a couple of days</p>	<p style="text-align: right;">Page 44</p> <p>1 Q. Do you remember the first time?</p> <p>2 A. Ooh, the first time? I don't remember the</p> <p>3 first time. I don't remember.</p> <p>4 Q. Tell me about the first incident where you</p> <p>5 deployed your taser that you can remember in West</p> <p>6 Valley.</p> <p>7 A. So the one that definitely stands out in my</p> <p>8 mind we were responding to a young man, they lived in a</p> <p>9 trailer park. There was a double wide trailer, we came</p> <p>10 in through the side entrance. Mom -- I think it was</p> <p>11 mom and grandma or his aunt and grandma or his mom and</p> <p>12 aunt, either way there was two ladies, they were like</p> <p>13 yeah, he's in his bedroom. You know, I think he had</p> <p>14 warrants. And I don't remember exactly what he was</p> <p>15 doing, but he was basically like they were afraid of</p> <p>16 him at the time.</p> <p>17 So me and my partner go to his door, he was</p> <p>18 there. I don't remember if he had a T-shirt on, but I</p> <p>19 think he was in boxers and he might have not had a</p> <p>20 T-shirt on, but I don't remember. Kind of a smaller</p> <p>21 bedroom, had a bed, some shelves, real cluttered area,</p> <p>22 and then he had a chair. He was sitting in the chair</p> <p>23 and at the time was kind of not compliant with our</p> <p>24 instructions. He stood up real quick, he grabbed</p> <p>25 something off the shelf.</p>

<p style="text-align: right;">Page 45</p> <p>1 It was -- I don't remember what it was. I</p> <p>2 think it might have been a flashlight, but he tucked it</p> <p>3 behind his back and he was trying to get us to perceive</p> <p>4 it as a weapon. At the time I didn't know exactly what</p> <p>5 it was and so I ended up -- my partner ended up going</p> <p>6 with his gun and I ended up going with my taser. I</p> <p>7 said whatever that is, drop it. He responded to</p> <p>8 something probably not friendly, and then I immediately</p> <p>9 tased him. Immediate incapacitation. He fell down.</p> <p>10 And I remember now that it was a flashlight</p> <p>11 for sure, but at the time I didn't know what he had</p> <p>12 grabbed off the shelf, so it was just a black shiny</p> <p>13 object that he tucked behind his back real quick, so.</p> <p>14 Q. Okay. You weren't worried that it was like a</p> <p>15 gun or another weapon?</p> <p>16 A. I thought for sure it was a weapon. It did</p> <p>17 not look like it was a gun. It was long and</p> <p>18 cylindrical, so at worst it could have been a knife,</p> <p>19 but it was just a black shiny object that he grabbed</p> <p>20 real quick. He didn't present it at us as if it was</p> <p>21 going to hurt us. He actually attempted to hide it</p> <p>22 behind his back and then refused to drop whatever it</p> <p>23 was. So I definitely perceived it as a weapon, but I</p> <p>24 just didn't know what kind of weapon it was.</p> <p>25 Q. And you already had your taser drawn by the</p>	<p style="text-align: right;">Page 47</p> <p>1 Q. Okay. Any other incidents that you remember</p> <p>2 deploying your taser in West Valley?</p> <p>3 A. West Valley. I know I did, but I don't</p> <p>4 remember. Sorry.</p> <p>5 Q. Okay. Did you ever have to use your service</p> <p>6 weapon in West Valley?</p> <p>7 A. No.</p> <p>8 Q. Did you ever have to draw it?</p> <p>9 A. Yes.</p> <p>10 Q. How many times did that happen?</p> <p>11 A. A lot.</p> <p>12 Q. Under what circumstance did you ordinarily</p> <p>13 need to do that?</p> <p>14 A. Any time, I mean, conducting a felony stop,</p> <p>15 any time you're clearing a building, any time you're</p> <p>16 making contact with somebody who you think there's a</p> <p>17 weapon, the weapon comes out.</p> <p>18 Q. On all felony stops, you're going to draw?</p> <p>19 A. You're going to draw and cover the car. I</p> <p>20 mean, yeah.</p> <p>21 Q. And you did those on a daily basis?</p> <p>22 A. I mean, very regularly.</p> <p>23 Q. Okay. I think we covered it, but to your</p> <p>24 knowledge, you didn't have any citizen complaints</p> <p>25 against you in West Valley?</p>
<p style="text-align: right;">Page 46</p> <p>1 time you saw that?</p> <p>2 A. No. It was after he did that I think I went</p> <p>3 taser and my partner went gun.</p> <p>4 Q. Is there a reason your partner drew his</p> <p>5 service weapon versus his taser?</p> <p>6 A. I think he --</p> <p>7 MS. NICHOLS: Just a second. Objection, calls for</p> <p>8 speculation.</p> <p>9 THE WITNESS: Sure. Sorry. I don't know why he</p> <p>10 did, but we both actually drew our guns first, and then</p> <p>11 I communicated to him that I was going to go to a</p> <p>12 taser.</p> <p>13 Q. (BY MR. LUTZ) Why did you make that decision?</p> <p>14 A. He was hiding it behind his back and he</p> <p>15 wasn't presenting it. And so whatever he was trying to</p> <p>16 do, he was trying to potentially get us to shoot him,</p> <p>17 and without the active aggression at us, I communicated</p> <p>18 to him. He knew what he was going to do, and he knew</p> <p>19 what I was going to do, and so that way I felt</p> <p>20 confident enough I could put my taser away. Regardless</p> <p>21 what he had or what he was doing, in that moment I knew</p> <p>22 he was going to cover.</p> <p>23 Q. Okay. And you said that was effective, he</p> <p>24 was incapacitated?</p> <p>25 A. Yeah.</p>	<p style="text-align: right;">Page 48</p> <p>1 A. Not that I know of.</p> <p>2 Q. Okay. And what was your next move or when</p> <p>3 did you decide to move on from West Valley?</p> <p>4 A. So I know that I was -- this one I remember</p> <p>5 more accurately is March I believe 16th of 2016 is when</p> <p>6 I started from West Valley to Salt Lake.</p> <p>7 Q. And what motivated your move?</p> <p>8 A. Money. There was a friend of mine. We</p> <p>9 worked together, actually, at the sheriff's office in</p> <p>10 Tooele. Again, with the financial struggles that they</p> <p>11 were having, a lot of people left. Me and another guy</p> <p>12 went to West Valley together, this other guy went to</p> <p>13 Salt Lake. He kept talking it up, it's the greatest</p> <p>14 agency, this and that. I looked into it, it actually</p> <p>15 made like \$6 an hour more. So literally chasing the</p> <p>16 same bad guys and just crossing the street made me \$6</p> <p>17 an hour more, so it made sense.</p> <p>18 Q. Okay. Made sense. Other than the money, was</p> <p>19 there a reason that you wanted to be on patrol in Salt</p> <p>20 Lake City?</p> <p>21 A. No. That was pretty much it.</p> <p>22 Q. Okay.</p> <p>23 A. I would say probably staffing. I think Salt</p> <p>24 Lake City was staffed better and so it was kind of</p> <p>25 easier to get time off, it was, you know, less call to</p>



<p style="text-align: right;">Page 49</p> <p>1 call, maybe a little bit more opportunity for proactive</p> <p>2 work. But I was satisfied with West Valley well enough</p> <p>3 that I would have stayed. Had they paid \$6 an hour</p> <p>4 more, probably so.</p> <p>5 Q. Do you recall about how many patrol officers</p> <p>6 West Valley employed?</p> <p>7 A. Of the department I think 60 to 70, but I</p> <p>8 don't know.</p> <p>9 Q. And same thing for Salt Lake, when you</p> <p>10 started for SLCPD.</p> <p>11 A. Oh, it's probably anywhere from as low as 80</p> <p>12 up to 120 and it fluctuates pretty dramatically</p> <p>13 depending.</p> <p>14 Q. Taking a step back, I asked you about Scott</p> <p>15 Robinson earlier.</p> <p>16 A. Okay.</p> <p>17 Q. Mistakenly thinking that you had been with</p> <p>18 him at the jail. When did you meet him?</p> <p>19 A. Not until I started working at Salt Lake.</p> <p>20 Q. Okay. What about Kris Smith?</p> <p>21 A. So I am not a hundred percent sure, but I</p> <p>22 believe that there was somebody that I think it was</p> <p>23 Kris that I was at court. I might have been working</p> <p>24 for West Valley. I was at court, and I think he worked</p> <p>25 at the courthouse, and me and him had a conversation.</p>	<p style="text-align: right;">Page 51</p> <p>1 Q. And your first position was what?</p> <p>2 A. Patrol.</p> <p>3 Q. And how long did you stay in the patrol</p> <p>4 division?</p> <p>5 A. Maybe it was a year and a half-ish. I think.</p> <p>6 Q. Okay. I'm going to hand you Exhibit 8.</p> <p>7 (Exhibit 8 marked.)</p> <p>8 Q. (BY MR. LUTZ) Do you recognize this document?</p> <p>9 A. No. I've never seen any of these before.</p> <p>10 Q. Okay. This was disclosed to us as part of</p> <p>11 your personnel file, I presume, which is it's your</p> <p>12 Training History Report --</p> <p>13 A. Gotcha.</p> <p>14 Q. -- from Utah.</p> <p>15 Do you see up at the top of page 1 of Exhibit</p> <p>16 8? It kind of -- it tracks your employment history.</p> <p>17 Can you just take a look at that and the dates.</p> <p>18 A. Which part?</p> <p>19 Q. Right here under the Employment heading</p> <p>20 (indicating).</p> <p>21 A. Right.</p> <p>22 Q. And then below that organization dates;</p> <p>23 right?</p> <p>24 A. Right.</p> <p>25 Q. Is this all accurate, these dates and the</p>
<p style="text-align: right;">Page 50</p> <p>1 He actually said he was going to apply for Salt Lake</p> <p>2 City and then I applied for Salt Lake City, but I think</p> <p>3 he had already gone there.</p> <p>4 So I cannot say a hundred percent certain,</p> <p>5 but I'm pretty certain that me and Kris met in court</p> <p>6 one time in a hallway. Other than that, it was Salt</p> <p>7 Lake City. If it wasn't him, it was definitely at Salt</p> <p>8 Lake City, but if it was him that I'm thinking, we met</p> <p>9 at the courthouse.</p> <p>10 Q. So you didn't really know either --</p> <p>11 A. No.</p> <p>12 Q. -- Scott or Kris --</p> <p>13 A. No.</p> <p>14 Q. -- until Salt Lake?</p> <p>15 A. Yeah.</p> <p>16 Q. Okay.</p> <p>17 Do you want to take five minutes?</p> <p>18 MS. NICHOLS: That would be great. Thanks.</p> <p>19 (Recess taken from 10:01 a.m. to 10:12 a.m.)</p> <p>20 Q. (BY MR. LUTZ) We're back on the record. I</p> <p>21 think where we left off we were kind of tracking your</p> <p>22 career up to Salt Lake City which I believe you said</p> <p>23 was in 2016 that you joined Salt Lake City Police</p> <p>24 Department?</p> <p>25 A. Yeah.</p>	<p style="text-align: right;">Page 52</p> <p>1 organizations that you were with?</p> <p>2 A. (Peruses document.)</p> <p>3 Yeah, so, I mean, I'm assuming that the</p> <p>4 sheriff's office, that actually looks probably more</p> <p>5 accurate than even what I described early, yes, because</p> <p>6 that seems right.</p> <p>7 The West Valley time I think, I mean,</p> <p>8 obviously it's probably more accurate. It definitely</p> <p>9 seems that it would make sense from -- the time of</p> <p>10 staging, I don't know if that's what the city is</p> <p>11 considering my time in their lateral academy that they</p> <p>12 have, but that is also . . .</p> <p>13 (Peruses document.)</p> <p>14 Yeah, I mean, I'm guessing that's probably</p> <p>15 accurate.</p> <p>16 Q. Okay. What's the lateral academy?</p> <p>17 A. So it's just a training period that they try</p> <p>18 to acclimate us to Salt Lake City policies, procedures,</p> <p>19 their computer equipment, their kind of evidence</p> <p>20 processing, stuff like that.</p> <p>21 Q. How long is it?</p> <p>22 A. I'm assuming whatever that -- if that says .</p> <p>23 . .</p> <p>24 (Peruses document.)</p> <p>25 I don't even think that that is -- I think it</p>



Page 53

1 was six weeks. And that's the part I don't know what  
2 they're considering staging, but I think that the  
3 actual lateral academy was only six weeks.

4 Q. Okay. During that time that you're in the  
5 lateral academy, are you also working on patrol?

6 A. No.

7 Q. You're in the academy and that's what you're  
8 doing for that period of time?

9 A. Just training.

10 Q. Okay. I saw you flip through it a little  
11 bit, but can we -- can you just take a general look at  
12 the subsequent pages of the history and training  
13 report. And what you'll see here is there's a course  
14 title, there's training dates, there's the Status  
15 Training category and number of hours.

16 Does this, as you flip through it, look like  
17 an accurate reflection of the trainings that you've  
18 completed with the Salt Lake City Police Department?

19 MS. NICHOLS: Objection as to the term trainings,  
20 but -- to the extent it's vague and ambiguous.

21 THE WITNESS: (Peruses documents.)

22 Sorry. Can you just repeat whatever the  
23 actual question was.

24 MR. LUTZ: Yeah. Can you read it back (to the  
25 reporter).

Page 54

1 (The record was read as follows:

2 "Q Does this, as you flip through  
3 it, look like an accurate reflection of the  
4 trainings that you've completed with the  
5 Salt Lake City Police Department?")

6 THE WITNESS: I would say that these are probably  
7 accurate, but not a full and total account of all of  
8 the trainings that I've participated in.

9 Q. (BY MR. LUTZ) Based on how we're using the  
10 term training?

11 A. Probably.

12 Q. Okay. What would you call these? Courses?

13 A. Some yes, some no.

14 Q. Okay. So, for example, like where we see  
15 it'll read SLCPD Cornerstone, what is that?

16 A. (Peruses documents.)

17 Q. Just go ahead and look at page 4 of Exhibit 8  
18 and just look at the very top right-hand corner.  
19 You'll see the course or training "ADT Annual Recert,  
20 July 1, 2019, completed," and then this category title  
21 is SLCPD Cornerstone.

22 A. I think Cornerstone is just the software that  
23 we use to track them.

24 Q. Oh, I see. That's not like an online  
25 training system?

Page 55

1 A. Some of it -- I want to say all of our  
2 training is -- I thought it was the database that they  
3 were all stored in, but I don't know.

4 Q. Okay.

5 A. But I know they do have some videos and stuff  
6 like that, the training opportunities to do that, yeah.

7 Q. So you said you had never seen this before;  
8 right? This whole document of your training.

9 A. No.

10 Q. Was there a way for you to access your own  
11 training records when you were at SLCPD?

12 A. Yes.

13 Q. How would you do that?

14 A. On Cornerstone.

15 Q. Okay. Did you ever do that?

16 A. No.

17 Q. You were never required to check what was  
18 completed or not completed, things of that nature?

19 A. There's like an in-box and I would check  
20 that.

21 Q. Okay. Would you just be alerted to when  
22 additional courses --

23 A. Yes.

24 Q. -- were required?

25 A. Yeah.

Page 56

1 Q. Okay. Did you track the hours? Anything of  
2 that nature?

3 A. No.

4 Q. Can you flip to page 3.

5 A. (Witness complies.)

6 Q. And you'll see down here at the very bottom,  
7 the bottom two rows, bottom four rows rather, "SWAT  
8 training, SWAT sniper training, monthly SWAT training,  
9 SWAT sniper training." Do you see that?

10 A. Yes.

11 Q. Do you remember those trainings?

12 A. Specifically?

13 Q. Any of the SWAT training that you did.

14 A. Like specifically those SWAT trainings or any  
15 SWAT trainings I've completed?

16 Q. Any of the SWAT trainings that you did in  
17 Salt Lake City.

18 A. Yeah, I remember a lot of them.

19 Q. Were those voluntary?

20 A. Yes.

21 Q. Why did you volunteer to do SWAT training?

22 A. So, I mean, in order to be a member of the  
23 SWAT team you have to complete your training hours, so  
24 it is voluntary to be on the team, but, I mean, it's  
25 mandatory to go to trainings.

<p style="text-align: right;">Page 57</p> <p>1 Q. So when did you volunteer for the SWAT team?</p> <p>2 A. So I got hired on March of, yeah, March 2016,</p> <p>3 so it would have been March 2017, one year later.</p> <p>4 Q. Okay. What motivated you to join the SWAT</p> <p>5 team?</p> <p>6 A. I'd been on two other teams prior to that and</p> <p>7 I wanted to continue that.</p> <p>8 Q. Is it just something you enjoy?</p> <p>9 A. Oh, yes.</p> <p>10 Q. What do you enjoy about it?</p> <p>11 A. The guys, the training. Better gear, better</p> <p>12 training.</p> <p>13 Q. Were you ever deployed as a SWAT officer in</p> <p>14 an actual incident?</p> <p>15 A. Yes.</p> <p>16 Q. How many times?</p> <p>17 A. A lot. I have no idea.</p> <p>18 Q. Could you give me a ballpark?</p> <p>19 A. No. There's no way I would give an accurate</p> <p>20 number of times I've been deployed as SWAT.</p> <p>21 Q. Is the SWAT team deployed often, in general?</p> <p>22 A. It's just like everything else. I mean, it</p> <p>23 kind of comes and goes in waves.</p> <p>24 Q. What's the purpose of the SWAT team?</p> <p>25 A. To --</p>	<p style="text-align: right;">Page 59</p> <p>1 not hundreds of men with guns inside buildings.</p> <p>2 Q. Okay.</p> <p>3 A. So.</p> <p>4 Q. Do you recall your -- actually, let's go</p> <p>5 back. Now, in your capacity as airport patrol, are you</p> <p>6 still serving on the SWAT team?</p> <p>7 A. Yes, I am.</p> <p>8 Q. When was the last time that you were deployed</p> <p>9 on the SWAT team?</p> <p>10 A. If I can look at my phone, I might be able to</p> <p>11 tell you.</p> <p>12 Q. Sure.</p> <p>13 A. (Peruses cellphone.)</p> <p>14 June 4th, potentially. I can't think of</p> <p>15 anything that was more recent than that last op.</p> <p>16 Q. And what happened on June 4th?</p> <p>17 A. So June 4th we served two search warrants.</p> <p>18 One was for narcotics, I think the other one was for</p> <p>19 guns, but I don't remember a hundred percent. I would</p> <p>20 have to read my report.</p> <p>21 Q. Can you walk me through your memory of that</p> <p>22 narcotics call?</p> <p>23 MS. NICHOLS: Objection, vague and calls for a</p> <p>24 narrative.</p> <p>25 THE WITNESS: So you want me to walk you through</p>
<p style="text-align: right;">Page 58</p> <p>1 MS. NICHOLS: Just a second. Objection.</p> <p>2 THE WITNESS: Sorry.</p> <p>3 MS. NICHOLS: Vague and calls for speculation.</p> <p>4 THE WITNESS: The purpose of the SWAT team?</p> <p>5 MR. LUTZ: Yeah.</p> <p>6 THE WITNESS: To respond to anything that would</p> <p>7 potentially be outside of the capability of a patrol</p> <p>8 officer. Also, within Salt Lake City, to serve any</p> <p>9 search warrants that are served by the city.</p> <p>10 Q. (BY MR. LUTZ) So give me some examples. Give</p> <p>11 me an example of the scenario of what you just</p> <p>12 described there. First, not serving a search warrant,</p> <p>13 but something that would be outside the capabilities of</p> <p>14 the ordinary patrol officers.</p> <p>15 A. A man barricaded in a building with a gun.</p> <p>16 Q. Were you ever -- did you ever participate in</p> <p>17 a SWAT call like that?</p> <p>18 A. Yes.</p> <p>19 Q. Multiple times?</p> <p>20 A. Yes.</p> <p>21 Q. How many?</p> <p>22 A. Again, there's no way for me to know.</p> <p>23 There's just no way.</p> <p>24 Q. Is it hundreds?</p> <p>25 A. Hundreds of SWAT deployments potentially, but</p>	<p style="text-align: right;">Page 60</p> <p>1 like the totality of the beginning to end for the SWAT</p> <p>2 operation?</p> <p>3 Q. (BY MR. LUTZ) Yeah. Just tell me what you</p> <p>4 did in the SWAT operation.</p> <p>5 MS. NICHOLS: Same objections.</p> <p>6 THE WITNESS: Yeah, so, I mean, we attended a</p> <p>7 briefing, obviously went to the location. My</p> <p>8 particular assignment I believe on the one, at least</p> <p>9 the one that I'm thinking of, that one definitely had</p> <p>10 our adviser from the narcotics unit, so I'm pretty sure</p> <p>11 it was an arrest warrant.</p> <p>12 So, anyways, I was a part of the clear team</p> <p>13 and so we ended up getting to the location, clearing</p> <p>14 the location, I think we took a few suspects into</p> <p>15 custody, and then we immediately turned it over to the</p> <p>16 detectives.</p> <p>17 Q. (BY MR. LUTZ) Okay. So you also have this</p> <p>18 training record that, this part of your SWAT training,</p> <p>19 you do SWAT sniper training?</p> <p>20 A. I did. I don't anymore.</p> <p>21 Q. Okay. Why not?</p> <p>22 A. Just didn't want to anymore.</p> <p>23 Q. Were you ever actually deployed as a sniper</p> <p>24 position on a SWAT team?</p> <p>25 A. Yes.</p>

Page 61	Page 63
<p>1 Q. How many times?</p> <p>2 <b>A. Dozens.</b></p> <p>3 Q. Did you ever have to -- in general in your</p> <p>4 time being deployed with SWAT, did you ever have to use</p> <p>5 a firearm?</p> <p>6 <b>A. Define used.</b></p> <p>7 Q. Fire.</p> <p>8 <b>A. No.</b></p> <p>9 Q. You can put this aside. We might come back</p> <p>10 to it.</p> <p>11 <b>A. (Complies.)</b></p> <p>12 Q. In general in your time as a Salt Lake City</p> <p>13 police officer, how many times have you discharged your</p> <p>14 firearm?</p> <p>15 MS. NICHOLS: Do you mean outside of training?</p> <p>16 MR. LUTZ: While on duty outside of training.</p> <p>17 <b>THE WITNESS: I'm glad you said that because that</b></p> <p>18 <b>could have been hundreds. Outside of training?</b></p> <p>19 MR. LUTZ: Yes.</p> <p>20 <b>THE WITNESS: I think it's only been two.</b></p> <p>21 Q. (BY MR. LUTZ) Do you remember those two</p> <p>22 incidents?</p> <p>23 <b>A. Yes.</b></p> <p>24 Q. And which were they?</p> <p>25 <b>A. One there was a deer that needed to be</b></p>	<p>1 Q. Okay. Is it accurate that that was in</p> <p>2 October 2017?</p> <p>3 <b>A. No. I felt like it was before that. I felt</b></p> <p>4 <b>like it was -- I think it was in June.</b></p> <p>5 Q. Okay. If you go back to Exhibit 8 --</p> <p>6 <b>A. This one (indicating)?</b></p> <p>7 Q. Yeah.</p> <p>8 <b>A. Yeah.</b></p> <p>9 Q. The date that we have here on page 1.</p> <p>10 <b>A. I didn't notice that before, but I don't --</b></p> <p>11 Q. You don't think this is accurate?</p> <p>12 <b>A. I don't think that's accurate.</b></p> <p>13 Q. It's not October 2017?</p> <p>14 <b>A. I don't think so.</b></p> <p>15 Q. You think it was June 2017?</p> <p>16 <b>A. I think so.</b></p> <p>17 Q. Do you remember when the incident with</p> <p>18 Mr. Harmon occurred?</p> <p>19 <b>A. August.</b></p> <p>20 Q. Was your transfer -- were you working with</p> <p>21 the airport police?</p> <p>22 <b>A. Sorry. Hold on a second. I didn't</b></p> <p>23 <b>realize -- yeah, this is -- this is -- that's</b></p> <p>24 <b>significantly wrong. I've only been out to the airport</b></p> <p>25 <b>since last June.</b></p>
Page 62	Page 64
<p>1 <b>dispatched and one was in the incident that we're here</b></p> <p>2 <b>for.</b></p> <p>3 Q. With Mr. Harmon?</p> <p>4 <b>A. Yes.</b></p> <p>5 Q. Those were the only two times you've ever</p> <p>6 discharged your service weapon as a police officer on</p> <p>7 duty with Salt Lake City?</p> <p>8 <b>A. Yeah, I think so. I don't think there's been</b></p> <p>9 <b>anything else.</b></p> <p>10 Q. And never in your capacity on the SWAT team?</p> <p>11 <b>A. No.</b></p> <p>12 Q. What precipitated your transfer to airport</p> <p>13 police?</p> <p>14 MS. NICHOLS: Objection, vague.</p> <p>15 Q. (BY MR. LUTZ) Was it your decision?</p> <p>16 <b>A. Yes. Sorry.</b></p> <p>17 Q. Did you put in for a transfer for that?</p> <p>18 <b>A. Yes.</b></p> <p>19 Q. Can you tell me why.</p> <p>20 <b>A. I wanted to.</b></p> <p>21 Q. Why did you want to?</p> <p>22 <b>A. Change of scenery. Yeah, sorry. I don't</b></p> <p>23 <b>understand.</b></p> <p>24 Q. I'm just wondering what motivated the change?</p> <p>25 <b>A. Yeah, just that.</b></p>	<p>1 Q. Last June?</p> <p>2 <b>A. Yeah. That's not accurate even remotely.</b></p> <p>3 Q. Okay. So June 2021 you went out to the</p> <p>4 airport?</p> <p>5 <b>A. I think so. It was definitely just last</b></p> <p>6 <b>year. I've only been out there -- to qualify, I've got</b></p> <p>7 <b>a badge that gets me in through the doors and I think</b></p> <p>8 <b>it says like June something as my expiration date, and</b></p> <p>9 <b>so I think it was June when I got it, so I think it was</b></p> <p>10 <b>June when I went out there. Does that make sense?</b></p> <p>11 Q. Uh-huh.</p> <p>12 <b>A. Other than that, I think I've been there</b></p> <p>13 <b>since June of last year, so yeah.</b></p> <p>14 Q. Okay. And the reason I ask is because these</p> <p>15 dates on your training history report which you believe</p> <p>16 are inaccurate, you know, this would only be a period</p> <p>17 of weeks after the incident with Mr. Harmon, and so</p> <p>18 what I was wondering was did that precipitate the</p> <p>19 change?</p> <p>20 <b>A. No.</b></p> <p>21 Q. It sounds like no.</p> <p>22 <b>A. No.</b></p> <p>23 Q. Okay. You can put that aside.</p> <p>24 <b>A. (Complies.)</b></p> <p>25 Q. Can we talk a little bit about your</p>

<p style="text-align: right;">Page 65</p> <p>1 disciplinary history at SLCPD?</p> <p>2 <b>A. Sure.</b></p> <p>3 Q. So what I've seen from your file, just a</p> <p>4 couple things. Can you tell me what discipline you've</p> <p>5 been subject to in your time with the Salt Lake City</p> <p>6 Police Department?</p> <p>7 <b>A. I think the only thing -- the only thing that</b></p> <p>8 <b>I've actually, and I don't think I was, I mean, I guess</b></p> <p>9 <b>it would depend on your qualification of what</b></p> <p>10 <b>discipline means. I was found at an at-fault accident,</b></p> <p>11 <b>so I was, I mean, basically at fault for that, but</b></p> <p>12 <b>other than that, I haven't been disciplined outside of</b></p> <p>13 <b>that.</b></p> <p>14 Q. Were you issued any kind of reprimand for the</p> <p>15 at-fault accident?</p> <p>16 <b>A. Like nothing in writing or anything, but,</b></p> <p>17 <b>yeah, basically told not to do it again. It was an</b></p> <p>18 <b>at-fault accident, so it just goes on my record as</b></p> <p>19 <b>such, and then it kind of affects like your safe</b></p> <p>20 <b>driving record within the department I think. Too many</b></p> <p>21 <b>of those could be negative.</b></p> <p>22 Q. Okay. So were those -- were you accused of a</p> <p>23 policy violation in that incident?</p> <p>24 <b>A. No. No.</b></p> <p>25 Q. And there's two driving incidents, right, on</p>	<p style="text-align: right;">Page 67</p> <p>1 Q. (BY MR. LUTZ) Okay. So I've just handed you</p> <p>2 what's been marked as Exhibit 9. Can you tell me</p> <p>3 what's on the front page of Exhibit 9?</p> <p>4 <b>A. I believe that that is the front right fender</b></p> <p>5 <b>of my patrol car.</b></p> <p>6 Q. Okay. And can you describe its condition?</p> <p>7 <b>A. Damaged.</b></p> <p>8 Q. Does this picture reflect what we were just</p> <p>9 talking about?</p> <p>10 <b>A. I believe so, yes.</b></p> <p>11 Q. Okay. Flip to the next page which is</p> <p>12 SLCC577.</p> <p>13 <b>A. (Complies.)</b></p> <p>14 Q. Have you seen this before?</p> <p>15 <b>A. No. Maybe.</b></p> <p>16 Q. It's addressed to you.</p> <p>17 <b>A. (Peruses document.)</b></p> <p>18 <b>Yeah, I think I got this in an email. I</b></p> <p>19 <b>don't know if I've received a copy of it before.</b></p> <p>20 Q. So this is from Brian Purvis, Captain of</p> <p>21 Internal Affairs; right?</p> <p>22 <b>A. Yes.</b></p> <p>23 Q. And you see at the bottom it says cc: IA File</p> <p>24 and it says you were involved in a preventable accident</p> <p>25 which is a violation of SLCPD policy?</p>
<p style="text-align: right;">Page 66</p> <p>1 your record?</p> <p>2 MS. NICHOLS: Objection to the extent that you</p> <p>3 have his record and he could review it to answer.</p> <p>4 But you can answer to your best recollection.</p> <p>5 <b>THE WITNESS: Yeah, so I've only had one at-fault</b></p> <p>6 <b>accident. I believe there's been multiple incidents in</b></p> <p>7 <b>my vehicle, yes.</b></p> <p>8 Q. (BY MR. LUTZ) And there was another one in</p> <p>9 West Valley?</p> <p>10 <b>A. Might have been one, but that was not an</b></p> <p>11 <b>accident.</b></p> <p>12 Q. Oh, right. That was the citizen complaint,</p> <p>13 possibly?</p> <p>14 <b>A. That I'm not even a hundred percent sure that</b></p> <p>15 <b>even -- yeah.</b></p> <p>16 Q. Yeah. But you're not -- that's your entire</p> <p>17 disciplinary history in Salt Lake City is these driving</p> <p>18 infractions?</p> <p>19 MS. NICHOLS: By disciplinary history, do you mean</p> <p>20 where he was issued discipline?</p> <p>21 MR. LUTZ: Yeah.</p> <p>22 <b>THE WITNESS: Yeah, I think in those terms the</b></p> <p>23 <b>only thing I've ever had is that one at-fault accident.</b></p> <p>24 MR. LUTZ: Okay.</p> <p>25 (Exhibit 9 marked.)</p>	<p style="text-align: right;">Page 68</p> <p>1 <b>A. Okay.</b></p> <p>2 Q. So you were accused of a policy violation</p> <p>3 because of this incident?</p> <p>4 <b>A. Correct.</b></p> <p>5 Q. If you go to these little numbers on the</p> <p>6 bottom, SLCC580.</p> <p>7 <b>A. (Complies.)</b></p> <p>8 Q. And you see under the Bureau Commander</p> <p>9 Comments here it says "Accident reviewed by the</p> <p>10 Accident Review Board and determined to be preventable</p> <p>11 by a unanimous vote. This is the subject officer's</p> <p>12 first preventable accident. He was directed by his</p> <p>13 division to complete an online driving course. This</p> <p>14 case is now closed."</p> <p>15 <b>A. Yes.</b></p> <p>16 Q. So this policy violation, you were determined</p> <p>17 to have violated a policy here?</p> <p>18 <b>A. Yes.</b></p> <p>19 Q. And the penalty, if you want to call it that,</p> <p>20 was an online driving course?</p> <p>21 <b>A. I actually had forgotten about that, but yes.</b></p> <p>22 Q. Okay. If you flip to 582.</p> <p>23 <b>A. (Complies.)</b></p> <p>24 Q. Do you recognize this image?</p> <p>25 <b>A. (Peruses document.)</b></p>

<p style="text-align: right;">Page 69</p> <p>1 No.</p> <p>2 Q. How about 583?</p> <p>3 A. (Peruses document.)</p> <p>4 Oh, yes.</p> <p>5 Q. What's this? What do we see in 583?</p> <p>6 A. 583 is a Dodge Durango.</p> <p>7 Q. And does this spark your memory --</p> <p>8 A. Yes.</p> <p>9 Q. -- about another incident?</p> <p>10 A. Yes.</p> <p>11 Q. Or the same incident as before?</p> <p>12 A. No. This is a different incident.</p> <p>13 Q. Okay. What happened in this incident?</p> <p>14 A. This guy made a U-turn and hit my car.</p> <p>15 Q. Okay. Go ahead and flip to 587.</p> <p>16 A. (Complies.)</p> <p>17 Sure.</p> <p>18 Q. What does 587 show?</p> <p>19 A. That's damage to the rear left fender of my</p> <p>20 patrol car.</p> <p>21 Q. Okay. Same thing on 588? Or it's not the</p> <p>22 same thing, but what does 588 show?</p> <p>23 A. Same damage from a different angle.</p> <p>24 Q. Okay. So do you remember this incident where</p> <p>25 the guy made a U-turn and hit your car?</p>	<p style="text-align: right;">Page 71</p> <p>1 A. Which one? Sorry. Where are you seeing?</p> <p>2 Q. So if you look down at the bottom of 592 --</p> <p>3 A. Right.</p> <p>4 Q. -- we have -- it says "Incident Type."</p> <p>5 A. Right.</p> <p>6 Q. Below that "Vehicle Accident."</p> <p>7 A. Right.</p> <p>8 Q. "Received 3, Total 3."</p> <p>9 A. Okay.</p> <p>10 Q. We've talked about two.</p> <p>11 A. Right.</p> <p>12 Q. What's the third one?</p> <p>13 A. I got rear ended.</p> <p>14 Q. Okay. When was that?</p> <p>15 A. I'm assuming if this -- if these are correct,</p> <p>16 then the initial one is potentially the January 14th of</p> <p>17 2017. This one in November 25 of 2017 I'm assuming --</p> <p>18 oh, I'm sorry, no. You know what. The one in January</p> <p>19 of 2017 is the one where I think is the one we're not</p> <p>20 talking about. The one in November of 2017 may be the</p> <p>21 one that -- I think that was the one, the first one we</p> <p>22 talked about, and I think the last one is the one with</p> <p>23 the Durango.</p> <p>24 Q. Okay.</p> <p>25 A. I think. Sorry.</p>
<p style="text-align: right;">Page 70</p> <p>1 A. Yes.</p> <p>2 Q. And did you have to attend a predetermination</p> <p>3 hearing about this incident as well?</p> <p>4 A. No.</p> <p>5 Q. And the incident with the Durango, was that</p> <p>6 before or after the first incident that we talked</p> <p>7 about?</p> <p>8 A. After.</p> <p>9 Q. Can you flip to 592.</p> <p>10 A. 592?</p> <p>11 Q. Uh-huh.</p> <p>12 A. (Peruses document.)</p> <p>13 Q. Okay. So we have here it's Concise Officer</p> <p>14 History, Officer Clinton Fox, and then three sort of</p> <p>15 descriptions. "Involved officer vehicle accident</p> <p>16 January 14th, 2017." Was one of the incidents that we</p> <p>17 just talked about this January 2017 incident?</p> <p>18 A. I think the first one we talked about might</p> <p>19 have been the January 17th one.</p> <p>20 Q. Okay. January 14th?</p> <p>21 A. 14th, sorry. I'm not a hundred percent sure.</p> <p>22 Q. Okay. So down here at the very bottom we</p> <p>23 have "Incident Type, Vehicle Accident 3, Total 3."</p> <p>24 What is the third incident we haven't talked about that</p> <p>25 this refers to?</p>	<p style="text-align: right;">Page 72</p> <p>1 Q. And the one that we're missing is one where</p> <p>2 you were rear ended?</p> <p>3 A. Yeah, well, technically the Durango, as it</p> <p>4 turned, kind of rear ended me as well, but then the</p> <p>5 other one the guy actually rear ended me and then</p> <p>6 actually pushed my car into the car in front of me.</p> <p>7 Q. Okay. Was that the incident with Officer</p> <p>8 Silva?</p> <p>9 A. That was the first one. The first pictures</p> <p>10 that you showed me?</p> <p>11 Q. Yeah.</p> <p>12 A. That was that one.</p> <p>13 Q. Okay. You can put that aside.</p> <p>14 A. (Complies.)</p> <p>15 Q. So other than what we just talked about with</p> <p>16 these driving incidents and the one sustained as a</p> <p>17 policy violation, you're not aware of any other policy</p> <p>18 violations that were sustained against you at your time</p> <p>19 with the SLCPD?</p> <p>20 A. None that I'm aware of.</p> <p>21 Q. Okay. Can we talk about your relationship</p> <p>22 with Officer Robinson, Scott Robinson?</p> <p>23 A. Sure.</p> <p>24 Q. I think you mentioned it before, but when did</p> <p>25 you first meet Scott Robinson?</p>



<p style="text-align: right;">Page 73</p> <p>1 A. So I'm assuming you don't intend, like, the</p> <p>2 very first time I ever met him passing in the hall,</p> <p>3 that kind of incident like meeting him in like a work</p> <p>4 capacity on a regular basis. Or what do you mean?</p> <p>5 Q. Yeah. When's the first time you met him?</p> <p>6 A. I mean, I have no idea when the first time I</p> <p>7 met him was.</p> <p>8 Q. When was the first time you worked with him?</p> <p>9 A. So when I moved to the squad at the beginning</p> <p>10 of that rotation, that was the first time -- I think</p> <p>11 that's the first time we were ever actually working</p> <p>12 like the same squad together. We were actually, I</p> <p>13 believe, beat partners. We were released in the same</p> <p>14 zone if not the same beat, and so that would be the</p> <p>15 first time we ever worked together.</p> <p>16 Q. How many officers are in a zone?</p> <p>17 A. It depends.</p> <p>18 Q. How many officers were in the zone that you</p> <p>19 two were in?</p> <p>20 A. Four of us I think.</p> <p>21 Q. Who were the other two?</p> <p>22 A. So there was me, Scott, Kris, and Josie.</p> <p>23 Q. Okay. Kris is Kris --</p> <p>24 A. Smith.</p> <p>25 Q. -- Smith? Okay.</p>	<p style="text-align: right;">Page 75</p> <p>1 A. Yeah, so once we were on the squad together,</p> <p>2 it was every night.</p> <p>3 Q. And that was for how long?</p> <p>4 A. Probably two to three months of that</p> <p>5 rotation.</p> <p>6 Q. And then you were on different squads?</p> <p>7 A. Yes.</p> <p>8 Q. Did you ever work with him on a daily basis</p> <p>9 again?</p> <p>10 A. No. I don't think I did.</p> <p>11 Q. Did you see him on a daily basis?</p> <p>12 A. No, not really. Like in passing maybe.</p> <p>13 Maybe in the building or something, but no.</p> <p>14 Q. Did you speak with him regularly?</p> <p>15 A. Yeah.</p> <p>16 Q. Were you friends?</p> <p>17 A. Yes.</p> <p>18 Q. Are you friends today?</p> <p>19 A. Yeah.</p> <p>20 Q. Did you talk to him yesterday?</p> <p>21 A. I did not.</p> <p>22 Q. Have you ever been to his house?</p> <p>23 A. Yes.</p> <p>24 Q. How many times?</p> <p>25 A. Two or three times.</p>
<p style="text-align: right;">Page 74</p> <p>1 How long did the three of you, as in Scott</p> <p>2 Robinson and Kris Smith, all work in that zone</p> <p>3 together?</p> <p>4 A. For that rotation.</p> <p>5 Q. How long is rotation?</p> <p>6 A. Four months I think.</p> <p>7 Q. And did you work with Officer Robinson again</p> <p>8 outside of that rotation?</p> <p>9 A. I don't know when he got to bikes, but we</p> <p>10 were never on the same squad again that I can remember</p> <p>11 anyways.</p> <p>12 Q. Okay. What do you mean when you say when he</p> <p>13 got to bikes?</p> <p>14 A. So I ended up on the bike squads and I was</p> <p>15 there for a while. I think he was still in patrol.</p> <p>16 While it's -- the bikes are technically a subdivision</p> <p>17 of patrol, we just had yellow shirts, bikes, and he</p> <p>18 eventually made it to bikes, but I don't know if we</p> <p>19 were ever on the same squad together.</p> <p>20 Q. Okay. How closely did you work with Officer</p> <p>21 Robinson?</p> <p>22 MS. NICHOLS: Objection, vague.</p> <p>23 THE WITNESS: The first time?</p> <p>24 Q. (BY MR. LUTZ) I mean, over the course of your</p> <p>25 time, did you guys work together frequently?</p>	<p style="text-align: right;">Page 76</p> <p>1 Q. Any of the places that he's lived.</p> <p>2 A. Five, six.</p> <p>3 Q. Is he married?</p> <p>4 A. Yes.</p> <p>5 Q. You met his wife?</p> <p>6 A. Yes.</p> <p>7 Q. Does he have kids?</p> <p>8 A. Yes.</p> <p>9 Q. Have you met his kids?</p> <p>10 A. Yes.</p> <p>11 Q. What are their names?</p> <p>12 A. Oh. If I say I don't remember, are you guys</p> <p>13 going to tell him?</p> <p>14 Q. I will give him this transcript if he asks</p> <p>15 for it.</p> <p>16 A. Oh. I'm going to hate it because I don't</p> <p>17 remember.</p> <p>18 Q. Do you know how old they are?</p> <p>19 A. One of them starts with a C I believe. Oh,</p> <p>20 I'm going to hate this. How old are they?</p> <p>21 Q. (Nods head.)</p> <p>22 A. One is close to 10, maybe slightly older. I</p> <p>23 think the other one is close to 14-ish plus or minus a</p> <p>24 couple years.</p> <p>25 Q. Boy and girl?</p>



Page 77	Page 79
<p>1       <b>A. Two girls.</b></p> <p>2       Q. Two girls. What's his wife's name?</p> <p>3       <b>A. I don't know.</b></p> <p>4       Q. Have they ever had you over for dinner?</p> <p>5       <b>A. We had a barbecue once. I was invited to a</b></p> <p>6 <b>barbecue.</b></p> <p>7       Q. Okay. Have you ever hosted Officer Robinson</p> <p>8 at your home?</p> <p>9       <b>A. Yes.</b></p> <p>10      Q. How many times?</p> <p>11      <b>A. Two or three.</b></p> <p>12      Q. Ever been to a bar with him?</p> <p>13      <b>A. Yeah. Yeah.</b></p> <p>14      Q. Still plan on socializing in the future?</p> <p>15      <b>A. Well, he's a sergeant now, so he may not want</b></p> <p>16 <b>to associate with a lowly patrol guy, but I would like</b></p> <p>17 <b>to with him, yes.</b></p> <p>18      Q. That's a pretty recent change; right?</p> <p>19      <b>A. Yes.</b></p> <p>20      Q. His promotion to sergeant?</p> <p>21      <b>A. Yeah.</b></p> <p>22      Q. Have you socialized with him since his</p> <p>23 promotion?</p> <p>24      <b>A. No.</b></p> <p>25      Q. Seems like you had to think about it. Are</p>	<p>1       MS. NICHOLS: And just a second. I'm going to</p> <p>2 object. To the extent that there's any discussion of</p> <p>3 privileged information, I direct you not to answer as</p> <p>4 to any discussions that either of you had with me.</p> <p>5       MR. LUTZ: It wouldn't be privileged between the</p> <p>6 two.</p> <p>7       MS. NICHOLS: It's joint counsel representation.</p> <p>8       MR. LUTZ: It doesn't matter if you're not</p> <p>9 involved in the communication. Are you on these text</p> <p>10 messages?</p> <p>11      MS. NICHOLS: If they're forwarding -- if they're</p> <p>12 forwarding and relaying information that I provided,</p> <p>13 it's privileged.</p> <p>14      MR. LUTZ: I don't think that's right if you're</p> <p>15 not on the communication, but we can get to it when we</p> <p>16 address the particular communication.</p> <p>17      <b>THE WITNESS: So I don't know what he is referring</b></p> <p>18 <b>to, but he said, "Probably working on my yard. You?"</b></p> <p>19 <b>I don't know.</b></p> <p>20      Q. (BY MR. LUTZ) Do you guys ever text about the</p> <p>21 case?</p> <p>22      <b>A. No.</b></p> <p>23      Q. Can I see?</p> <p>24      <b>A. I mean, no.</b></p> <p>25      Q. I mean, well, you can say no now, but we'll</p>
Page 78	Page 80
<p>1 you guys texting?</p> <p>2      <b>A. I -- so, genuinely, the last time I saw him</b></p> <p>3 <b>was actually on a call, and he was off in the distance,</b></p> <p>4 <b>and I literally had to shout at him and say hi, so I</b></p> <p>5 <b>haven't talked to him in a while.</b></p> <p>6      Q. But do you text message with him?</p> <p>7      <b>A. Not recently in a long time.</b></p> <p>8      Q. What's a long time?</p> <p>9      <b>A. Long enough I don't remember the last time I</b></p> <p>10 <b>texted with him.</b></p> <p>11      Q. Want to check?</p> <p>12      <b>A. I can check.</b></p> <p>13             (Peruses cellphone.)</p> <p>14      I think I just figured out what his wife's</p> <p>15 name is.</p> <p>16      Q. What is it?</p> <p>17      <b>A. I believe it's Amber. Am I correct? Do you</b></p> <p>18 <b>know?</b></p> <p>19      Q. I don't know.</p> <p>20      <b>A. Dammit. I'm still going to wonder about</b></p> <p>21 <b>that. So this has May 30th I think is the last time</b></p> <p>22 <b>that we've texted. I have nothing after that, so I</b></p> <p>23 <b>would assume that's accurate.</b></p> <p>24      Q. What did you text him?</p> <p>25      <b>A. It says --</b></p>	<p>1 put in a discovery request and it will be discoverable.</p> <p>2      <b>A. Yeah, that's fine.</b></p> <p>3      Q. Okay.</p> <p>4      <b>A. Okay.</b></p> <p>5      Q. Don't delete it.</p> <p>6      <b>A. Delete what?</b></p> <p>7      Q. Any of your communications.</p> <p>8      <b>A. Okay.</b></p> <p>9      Q. What about Officer Smith? You guys friends?</p> <p>10      <b>A. Yes.</b></p> <p>11      Q. Kris Smith?</p> <p>12      <b>A. Yes.</b></p> <p>13      Q. They both described you as friends, and</p> <p>14 colleagues, obviously. So have you socialized with</p> <p>15 Kris Smith out of work?</p> <p>16      <b>A. Yes, outside of work.</b></p> <p>17      Q. Has he ever been to your house?</p> <p>18      <b>A. Yes.</b></p> <p>19      Q. How many times?</p> <p>20      <b>A. At least once. I don't -- at least once. I</b></p> <p>21 <b>don't know how many times.</b></p> <p>22      Q. Have you ever been to his?</p> <p>23      <b>A. I don't think I have.</b></p> <p>24      Q. Ever been to a bar together?</p> <p>25      <b>A. Kris doesn't drink. We've been to a</b></p>

<p style="text-align: right;">Page 81</p> <p>1 restaurant together. I had a beer, he didn't.</p> <p>2 Q. How many times have you guys been out to eat</p> <p>3 together?</p> <p>4 A. Outside of work?</p> <p>5 Q. Let's start with outside of work.</p> <p>6 A. Maybe -- maybe two. Yeah.</p> <p>7 Q. How about at work?</p> <p>8 A. Well, at work we probably go to dinner quite</p> <p>9 a bit. We were on the same squad. We probably ate</p> <p>10 every night that we could, yeah.</p> <p>11 Q. And Kris has been there about the same time</p> <p>12 that you have, right, at Salt Lake City Police</p> <p>13 Department?</p> <p>14 MS. NICHOLS: Objection, calls for speculation.</p> <p>15 THE WITNESS: Yeah, I think he's been there longer</p> <p>16 than I have.</p> <p>17 Q. (BY MR. LUTZ) Yeah, I thought you said</p> <p>18 earlier that you had some inclination -- inkling that</p> <p>19 he had applied right before you. Is that right or am I</p> <p>20 misstating that?</p> <p>21 A. I think you're misstating it. I think we had</p> <p>22 a conversation that we both intended to apply. When</p> <p>23 that actually happened, I have no idea what the, like,</p> <p>24 sequence of events that would have had happened.</p> <p>25 Q. Do you remember if you started before him?</p>	<p style="text-align: right;">Page 83</p> <p>1 way I'm going to remember his kids' names.</p> <p>2 Q. How many kids does he have?</p> <p>3 A. Is it four? I don't know.</p> <p>4 Q. What are their -- do you have any idea what</p> <p>5 their approximate ages are?</p> <p>6 A. I know that there's one, again, roughly,</p> <p>7 around 10-ish, plus or minus a few years, and then</p> <p>8 another one closer again about 14. I think that</p> <p>9 there's one below, middle, and above that, but I</p> <p>10 don't -- I can't remember. Around there I think.</p> <p>11 That's a lot of guessing on my part.</p> <p>12 Q. Is he married?</p> <p>13 A. Yes.</p> <p>14 Q. Do you know his wife's name?</p> <p>15 A. Yes. I believe her name's Laura. I hope I</p> <p>16 don't get that wrong too.</p> <p>17 Q. And you're married?</p> <p>18 A. Yes.</p> <p>19 Q. What's your wife's name?</p> <p>20 A. I know my wife's name. I can be a hundred</p> <p>21 percent about her name being Brittany. I think.</p> <p>22 Sorry, just kidding.</p> <p>23 Q. Have you and Brittany ever been out with Kris</p> <p>24 and his wife as couples?</p> <p>25 A. Yeah. I mean, yeah. Yes.</p>
<p style="text-align: right;">Page 82</p> <p>1 A. He started before me.</p> <p>2 Q. Okay. So the three of you are friends?</p> <p>3 A. Yeah.</p> <p>4 Q. Do you have any idea if Kris and Scott are</p> <p>5 friends with each other?</p> <p>6 MS. NICHOLS: Objection, calls for speculation.</p> <p>7 THE WITNESS: I think so.</p> <p>8 Q. (BY MR. LUTZ) Do the three of you all hang</p> <p>9 out together?</p> <p>10 A. Again, I think the interactions between,</p> <p>11 like, either work and off work; right?</p> <p>12 Q. As to both.</p> <p>13 A. Yeah, I mean, on duty obviously we were on</p> <p>14 the same squad, we'd hang out all the time. Off duty I</p> <p>15 think we've all been -- we've all, like, had dinner</p> <p>16 together or hung out at least a couple of times. I</p> <p>17 don't know about, I mean, probably at least once if not</p> <p>18 two times where it's all three of us or one at a time</p> <p>19 otherwise, if that makes sense.</p> <p>20 Q. Okay. Have you met Kris Smith's family?</p> <p>21 A. Yes.</p> <p>22 Q. Does he have children?</p> <p>23 A. Yes.</p> <p>24 Q. Do you know their names?</p> <p>25 A. No, because he has more kids and there's no</p>	<p style="text-align: right;">Page 84</p> <p>1 Q. How many times?</p> <p>2 A. Once, twice.</p> <p>3 Q. Have your kids ever met?</p> <p>4 A. Yes.</p> <p>5 Q. Are your kids friends with one another, any</p> <p>6 of them?</p> <p>7 A. I mean, they were friendly to each other at</p> <p>8 the time, but they don't -- I mean, I doubt that even</p> <p>9 they may remember meeting them. So not friends, but</p> <p>10 they were friendly.</p> <p>11 Q. Okay. They have met though?</p> <p>12 A. Yeah.</p> <p>13 Q. So that's sort of outside of work. Did you</p> <p>14 have a close relationship with Officer Robinson as a</p> <p>15 colleague?</p> <p>16 MS. NICHOLS: Objection, vague.</p> <p>17 THE WITNESS: So, like, what do you mean?</p> <p>18 Q. (BY MR. LUTZ) You worked together frequently,</p> <p>19 you care about him?</p> <p>20 A. Yeah.</p> <p>21 Q. You care about his professional career?</p> <p>22 A. Yeah.</p> <p>23 Q. Do you think he cares about yours?</p> <p>24 MS. NICHOLS: Objection, calls for speculation.</p> <p>25 THE WITNESS: I would hope so.</p>

<p style="text-align: right;">Page 85</p> <p>1 MR. LUTZ: He says he does.</p> <p>2 <b>THE WITNESS: (Nods head.)</b></p> <p>3 Q. (BY MR. LUTZ) When I asked Officer Robinson</p> <p>4 yesterday about August 13, 2017, and when you two took</p> <p>5 a call to go help Kris Smith, I asked why you two</p> <p>6 jumped on that call together and he said it's just what</p> <p>7 we do or what we did. Does that sound right to you?</p> <p>8 <b>A. Yeah. Sorry.</b></p> <p>9 MS. NICHOLS: You're good. Go ahead.</p> <p>10 Q. (BY MR. LUTZ) I mean, to me that describes a</p> <p>11 close personal working relationship. Is that accurate?</p> <p>12 <b>A. Yeah.</b></p> <p>13 Q. I think it sounds like he believes he had</p> <p>14 your back and you had his back. Is that accurate?</p> <p>15 <b>A. Yes.</b></p> <p>16 Q. Same thing with Kris?</p> <p>17 <b>A. Yes.</b></p> <p>18 Q. We talked a little bit about your military</p> <p>19 combat experience at the very beginning of the day.</p> <p>20 Can we go back, and I just want to ask you some</p> <p>21 additional details. I do honestly apologize if it's</p> <p>22 sensitive. I don't mean to cause unnecessary stress.</p> <p>23 But you were involved in combat you said</p> <p>24 numerous times and you discharged your weapon several</p> <p>25 times?</p>	<p style="text-align: right;">Page 87</p> <p>1 Q. Okay. Just that one time?</p> <p>2 <b>A. I mean, there was more than that, but it was</b></p> <p>3 <b>also less likely that -- I mean, yeah, I mean, there's</b></p> <p>4 <b>just no way to know sometimes. You know what I mean?</b></p> <p>5 Q. Yeah, well, because it sounds like you were</p> <p>6 involved in a lot of gunfights. Is that what you're</p> <p>7 saying?</p> <p>8 <b>A. Yeah, more than a couple.</b></p> <p>9 Q. Do you have any idea how many?</p> <p>10 <b>A. No.</b></p> <p>11 Q. You have significant combat experience?</p> <p>12 MS. NICHOLS: Objection, vague.</p> <p>13 <b>THE WITNESS: Yeah, comparatively, no.</b></p> <p>14 <b>Comparatively it was very light. I have friends that</b></p> <p>15 <b>actually had lots of combat experience. I had very</b></p> <p>16 <b>minor combat experience. So it's hard to say. You</b></p> <p>17 <b>know what I mean?</b></p> <p>18 Q. (BY MR. LUTZ) I do. When was the incident</p> <p>19 that we just talked about?</p> <p>20 <b>A. I have no idea. What do you mean when?</b></p> <p>21 Q. At least, during which deployment?</p> <p>22 <b>A. It was the one to Ramadi.</b></p> <p>23 Q. Okay. Sometime within that deployment?</p> <p>24 <b>A. Yeah.</b></p> <p>25 Q. And I understand that these things can blend</p>
<p style="text-align: right;">Page 86</p> <p>1 <b>A. (Nods head.)</b></p> <p>2 Q. Were you -- did you ever shoot other</p> <p>3 combatants?</p> <p>4 <b>A. Yes.</b></p> <p>5 Q. Can you tell me how many times?</p> <p>6 <b>A. One time that I know for sure. Other than</b></p> <p>7 <b>that, it would just be speculating whether I actually</b></p> <p>8 <b>hit what I was aiming at.</b></p> <p>9 Q. You had one confirmed kill?</p> <p>10 <b>A. It doesn't -- in terms of saying like a</b></p> <p>11 <b>confirmed kill, that doesn't quite qualify --</b></p> <p>12 Q. Okay.</p> <p>13 <b>A. -- as you would potentially understand. You</b></p> <p>14 <b>know what I'm saying?</b></p> <p>15 Q. You'll have to -- you'll have to correct me</p> <p>16 on military terminology.</p> <p>17 <b>A. Yeah.</b></p> <p>18 Q. I don't know --</p> <p>19 <b>A. So, no, there would be absolutely no record</b></p> <p>20 <b>of me actually doing it. There's no confirmed kills</b></p> <p>21 <b>for just general fighting, if that makes sense.</b></p> <p>22 Q. But you know you hit someone at some point?</p> <p>23 <b>A. It's more than likely that it was me that hit</b></p> <p>24 <b>him, so that's always weighed on my conscious that I</b></p> <p>25 <b>believe that I did.</b></p>	<p style="text-align: right;">Page 88</p> <p>1 together and it was also a long time ago. Was Ramadi</p> <p>2 your last deployment?</p> <p>3 <b>A. Yes.</b></p> <p>4 Q. Did that incident have anything to do with</p> <p>5 your decision not to go back?</p> <p>6 <b>A. No.</b></p> <p>7 Q. Okay. We can talk about something less</p> <p>8 intense if you want --</p> <p>9 <b>A. I'd appreciate it.</b></p> <p>10 Q. -- which is tasers.</p> <p>11 This is already marked as Exhibit 1 I</p> <p>12 believe. Let's just mark the whole manual as an</p> <p>13 exhibit.</p> <p>14 (Exhibit 10 marked.)</p> <p>15 MR. LUTZ: Okay. Don't worry. We're not going to</p> <p>16 look through this whole thing.</p> <p>17 <b>THE WITNESS: I got it.</b></p> <p>18 Q. (BY MR. LUTZ) Okay. Have you ever seen</p> <p>19 Exhibit 10 before?</p> <p>20 <b>A. No.</b></p> <p>21 Q. Do you recognize the device pictured on the</p> <p>22 front?</p> <p>23 <b>A. Yes.</b></p> <p>24 Q. What is that?</p> <p>25 <b>A. That is a taser.</b></p>

<p style="text-align: right;">Page 89</p> <p>1 Q. Does that look like the model of taser that</p> <p>2 you carried around 2017?</p> <p>3 A. I believe so.</p> <p>4 Q. Okay. Do you remember the model number?</p> <p>5 A. I believe it was X26.</p> <p>6 Q. Okay. So is it safe to say this is the user</p> <p>7 manual for the taser that you were carrying in 2017?</p> <p>8 MS. NICHOLS: Objection, foundation.</p> <p>9 THE WITNESS: I would say it's safe to say that if</p> <p>10 in fact I was carrying the X26, it does look like the</p> <p>11 user manual for the X26 taser.</p> <p>12 Q. (BY MR. LUTZ) Okay, great. We can document</p> <p>13 that in your record later.</p> <p>14 A. Okay.</p> <p>15 Q. Okay. So we'll go through this in a little</p> <p>16 bit more detail, but before we do, can you just</p> <p>17 describe for me what a taser is used for?</p> <p>18 MS. NICHOLS: Objection, vague.</p> <p>19 Q. (BY MR. LUTZ) Let me rephrase. What's its</p> <p>20 purposes?</p> <p>21 MS. NICHOLS: Objection, vague.</p> <p>22 THE WITNESS: Ultimately the taser is just a</p> <p>23 nonlethal option for attempting to gain compliance,</p> <p>24 yeah.</p> <p>25 Q. (BY MR. LUTZ) And how does it help you gain</p>	<p style="text-align: right;">Page 91</p> <p>1 Page 4. Okay. Looking at page 4, the lowest header</p> <p>2 down here is titled Neuro Muscular Incapacitation, NMI.</p> <p>3 A. Yes.</p> <p>4 Q. Have you heard that term before?</p> <p>5 A. Yes.</p> <p>6 Q. And where have you heard that term before?</p> <p>7 A. In training.</p> <p>8 Q. Training with regard to anything in</p> <p>9 particular?</p> <p>10 A. Yeah, I believe with tasers.</p> <p>11 Q. Okay. So let's just read this bottom</p> <p>12 paragraph here which is "Taser technology is designed</p> <p>13 to use electrical impulses similar to those in your</p> <p>14 body's nervous system to cause stimulation of the</p> <p>15 sensory and motor nerves. Neuro muscular</p> <p>16 incapacitation (NMI) occurs when a CEW is able to cause</p> <p>17 involuntary stimulation of both the sensory nerves and</p> <p>18 the motor nerves. It is not dependent on pain and can</p> <p>19 be effective on subjects with a high level of pain</p> <p>20 tolerance."</p> <p>21 Is that your understanding of how a taser</p> <p>22 works?</p> <p>23 A. More or less, yes.</p> <p>24 Q. What's the less?</p> <p>25 A. I mean, I think it goes -- there's a pretty</p>
<p style="text-align: right;">Page 90</p> <p>1 compliance?</p> <p>2 A. Like, can you -- how does it help me to gain</p> <p>3 compliance?</p> <p>4 Q. Yeah.</p> <p>5 A. I mean, if there's somebody that's combative</p> <p>6 and I use my taser, normally we can get them in</p> <p>7 handcuffs easier.</p> <p>8 Q. What's the cause and effect there?</p> <p>9 A. What do you mean?</p> <p>10 Q. How does the taser help you gain compliance?</p> <p>11 A. Typically it should incapacitate somebody</p> <p>12 where they no longer have like the physical ability to</p> <p>13 like run, fight, do that kind of thing.</p> <p>14 Q. Okay. So it helps you gain compliance by</p> <p>15 physically incapacitating someone?</p> <p>16 A. Yes.</p> <p>17 Q. And do you know what CEW stands for?</p> <p>18 A. Conducted weapon -- or no, sorry. Conducted</p> <p>19 energy. I don't think it's weapon. Conducted energy</p> <p>20 something. I can't remember. Does it say?</p> <p>21 Q. It does say there somewhere.</p> <p>22 Okay. Can you flip to page 4 of Exhibit 10.</p> <p>23 A. (Witness complies.)</p> <p>24 Q. I think this will help illustrate what I'm</p> <p>25 getting at. Sorry. There's some introductory pages.</p>	<p style="text-align: right;">Page 92</p> <p>1 big policy here. Or manual. I think that is an</p> <p>2 overgeneralization of how a taser can be effective.</p> <p>3 Q. Can you elaborate?</p> <p>4 MS. NICHOLS: Objection, vague.</p> <p>5 Q. (BY MR. LUTZ) What are the other ways it can</p> <p>6 be effective?</p> <p>7 A. Well, so my point is, I mean, two different</p> <p>8 deployment methods. There's, I mean, like I say, it's</p> <p>9 just a very simplified generalization of what I would</p> <p>10 be able to explain, but I don't have, like, the actual</p> <p>11 probably verbiage that would be better.</p> <p>12 Q. It sounds like you know the taser well from</p> <p>13 experience?</p> <p>14 A. Well enough, yes. Yeah.</p> <p>15 Q. What are the two deployment methods?</p> <p>16 A. So you can either deploy where you actually</p> <p>17 discharge it and it shoots the two prongs out or you</p> <p>18 can do what they call a drive stun.</p> <p>19 Q. Okay. Describe that first method in a little</p> <p>20 more detail.</p> <p>21 A. So taser makes small different cartridges,</p> <p>22 they have different distances that they can shoot,</p> <p>23 there's different angles for the spread of the probes,</p> <p>24 and I believe there's like a C02 cartridge or something</p> <p>25 that actually launches the probes out. If they make</p>

<p style="text-align: right;">Page 93</p> <p>1 contact with the subject, then that is what makes the</p> <p>2 connection for the taser to actually be able to send</p> <p>3 the -- or to perform the NMI.</p> <p>4 Q. Okay. Is the cartridge the thing that</p> <p>5 contains the probes?</p> <p>6 A. Yes.</p> <p>7 Q. And then the probes are connected by some</p> <p>8 sort of conductive wire back to the handle?</p> <p>9 A. Yes.</p> <p>10 Q. Are the cartridges reloadable?</p> <p>11 A. Yes.</p> <p>12 Q. Are they -- I should ask this first. Are</p> <p>13 they one-time use?</p> <p>14 A. So each individual cartridge is one-time use.</p> <p>15 You can't take those prongs/wire and roll them up and</p> <p>16 put them back in and reload it that way, no.</p> <p>17 Q. But can you put a new cartridge in?</p> <p>18 A. Yes.</p> <p>19 Q. So that's -- roughly, that's the probe</p> <p>20 deployment?</p> <p>21 A. Yes.</p> <p>22 Q. What's the range on the probes?</p> <p>23 A. I believe the ones that we were issued are 25</p> <p>24 feet, but like I said, there's multiple different</p> <p>25 cartridges you can get.</p>	<p style="text-align: right;">Page 95</p> <p>1 If you pulled your taser and you decided between the</p> <p>2 two methods, is it really just the distance of the</p> <p>3 subject that you would use to determine?</p> <p>4 A. I mean, there's probably -- obviously the</p> <p>5 totality of the situation is going to dictate which</p> <p>6 one.</p> <p>7 Q. Okay.</p> <p>8 A. So, yeah, it can't just be one thing that you</p> <p>9 go oh, now I'm going to do it.</p> <p>10 Q. Fair enough. I guess, just to clarify, you</p> <p>11 can use the probe -- you can deploy the probes at a</p> <p>12 distance. With the drive stun you're going to be in</p> <p>13 close quarters, arm's reach?</p> <p>14 A. You'd have to be able to touch them to use</p> <p>15 the drive stun.</p> <p>16 Q. Okay. This next paragraph in Exhibit 10</p> <p>17 under the one we just read, this is obviously Tasers,</p> <p>18 it's a description of what this model does, but it's</p> <p>19 "Previous generations of stun guns primarily affected</p> <p>20 the sensory nerves only resulting in pain compliance.</p> <p>21 A subject with very high tolerance to pain (e.g., a</p> <p>22 drug user, person in serious psychological distress, or</p> <p>23 a trained focus fighter) may not be affected by the</p> <p>24 pain or might be able to fight through the pain of a</p> <p>25 traditional stun gun."</p>
<p style="text-align: right;">Page 94</p> <p>1 Q. Okay. Do you think the one -- you think 25</p> <p>2 feet was what you carried?</p> <p>3 A. I think so.</p> <p>4 Q. And then what's the drive stun? How is that</p> <p>5 different?</p> <p>6 A. So on kind of the end of the taser there's at</p> <p>7 least two, I think there's four different little metal</p> <p>8 contacts that -- almost like the stun guns that you see</p> <p>9 in the movies. It kind of acts the same. You actually</p> <p>10 have to make contact with that to be able to close the</p> <p>11 circuit to perform that on them.</p> <p>12 Q. Okay. Does it have a different effect on the</p> <p>13 probes?</p> <p>14 A. No. I mean, it's the same electrical</p> <p>15 connectivity. It's just less effective.</p> <p>16 Q. I'm trying to see how to phrase this</p> <p>17 question. But in terms of, you know, it has these two</p> <p>18 different deployment methods, which I'm assuming one is</p> <p>19 appropriate for some situations and the other for</p> <p>20 others. Does that make sense?</p> <p>21 Like, when would be a good situation,</p> <p>22 hypothetically, to use the probe deployment?</p> <p>23 A. I mean, if you had distance and standoff, you</p> <p>24 could.</p> <p>25 Q. Is that all that we're really thinking about?</p>	<p style="text-align: right;">Page 96</p> <p>1 And it sounds like what they're -- the</p> <p>2 distinction they're making here is this model will</p> <p>3 incapacitate you through more than just pain?</p> <p>4 MS. NICHOLS: Objection, calls for --</p> <p>5 THE WITNESS: Correct.</p> <p>6 MS. NICHOLS: Sorry. Calls for speculation,</p> <p>7 foundation.</p> <p>8 Q. (BY MR. LUTZ) I mean, that's how it reads to</p> <p>9 me. Is that how it reads to you?</p> <p>10 A. Sure, yes.</p> <p>11 Q. And is it your understanding that it</p> <p>12 operates -- it physically incapacitates people not only</p> <p>13 by causing pain, but by causing NMI?</p> <p>14 MS. NICHOLS: Objection, calls for speculation and</p> <p>15 expert testimony.</p> <p>16 THE WITNESS: Sorry. Say it again.</p> <p>17 Q. (BY MR. LUTZ) So our understanding of</p> <p>18 neuromuscular incapacitation is that that is different</p> <p>19 than pain compliance; right?</p> <p>20 MS. NICHOLS: Same objections.</p> <p>21 THE WITNESS: I believe so.</p> <p>22 Q. (BY MR. LUTZ) Okay. At the end of the day</p> <p>23 the taser, if used correctly, will incapacitate someone</p> <p>24 physically; right?</p> <p>25 MS. NICHOLS: Objection, calls for speculation.</p>



<p style="text-align: right;">Page 97</p> <p>1       <b>THE WITNESS: Potentially.</b></p> <p>2       Q.   (BY MR. LUTZ) That's why you would attempt --</p> <p>3       A.   I would attempt to use it, yeah, to attempt</p> <p>4   to take them down.</p> <p>5       Q.   How many --</p> <p>6       A.   Not for the pain compliance.</p> <p>7       Q.   Right. How many times have you physically</p> <p>8   incapacitated somebody with a taser?</p> <p>9       A.   Somewhere between eight to ten.</p> <p>10      Q.   Have you ever used a taser against somebody</p> <p>11   that was carrying a weapon?</p> <p>12      A.   No. Just the one incident I gave you before.</p> <p>13   That's the only time I thought there was a perceived</p> <p>14   weapon, potentially, and it ended up being a</p> <p>15   flashlight. So other than that, I think -- I think no.</p> <p>16      Q.   Have you deployed a taser against someone who</p> <p>17   was being physically combative?</p> <p>18      A.   Yes.</p> <p>19      Q.   Can you tell me about one of those</p> <p>20   situations?</p> <p>21      A.   Yeah, so there was a gentleman passed out on</p> <p>22   a porch. He actually came with balled fists, didn't</p> <p>23   obey commands, started coming at us as if he wanted to</p> <p>24   fight, we tased him.</p> <p>25      Q.   Was he able to fight after you tased him?</p>	<p style="text-align: right;">Page 99</p> <p>1       Q.   You just discovered him just trespassing?</p> <p>2       A.   Uh-huh.</p> <p>3       Q.   How did that situation end up getting</p> <p>4   resolved?</p> <p>5       A.   We finally got him in handcuffs and he</p> <p>6   actually continued to fight after handcuffs, but yeah.</p> <p>7       Q.   But in that case the drive stun was not</p> <p>8   effective?</p> <p>9       A.   It was not effective.</p> <p>10      Q.   Okay. You can put Exhibit 10 away.</p> <p>11      A.   What's that?</p> <p>12      Q.   You can put Exhibit 10 away.</p> <p>13      A.   (Complies.)</p> <p>14      MS. NICHOLS: Nick, we've been going a little over</p> <p>15   an hour. If you're going to launch into a whole new</p> <p>16   thing, can we take a quick break?</p> <p>17      MR. LUTZ: Yeah.</p> <p>18      MS. NICHOLS: Okay. Thanks.</p> <p>19      (Recess taken from 11:20 a.m. to 11:33 p.m.)</p> <p>20      Q.   (BY MR. LUTZ) Okay. We're back. In</p> <p>21   performing your duties as a Salt Lake City police</p> <p>22   officer on patrol, are you equipped with a body camera?</p> <p>23      A.   Yes.</p> <p>24      Q.   Always?</p> <p>25      A.   Yes.</p>
<p style="text-align: right;">Page 98</p> <p>1       A.   No, he was not.</p> <p>2       Q.   And is that generally your experience with</p> <p>3   deploying your taser on combative folks?</p> <p>4       A.   All but --</p> <p>5      MS. NICHOLS: Objection, vague.</p> <p>6      <b>THE WITNESS: Sorry. I think all but one that I</b></p> <p>7   <b>can think of in this moment.</b></p> <p>8       Q.   (BY MR. LUTZ) What's the one you're talking</p> <p>9   about?</p> <p>10      A.   That one we were in close proximity, I tried</p> <p>11   to use the drive stun and it was completely</p> <p>12   ineffective.</p> <p>13      Q.   Can you tell me more about that situation?</p> <p>14   What was the behavior of the subject that led you to</p> <p>15   use the drive stun?</p> <p>16      A.   He told me he was going to beat me to death.</p> <p>17      Q.   Was he otherwise being physically combative?</p> <p>18      A.   At that point not physically combative, but</p> <p>19   he was failing to follow any commands. Until my backup</p> <p>20   got there, we didn't engage physically.</p> <p>21      Q.   How did you come into contact with this</p> <p>22   person?</p> <p>23      A.   He was trespassing on someone's property.</p> <p>24      Q.   Did you get a call to go out to there?</p> <p>25      A.   No.</p>	<p style="text-align: right;">Page 100</p> <p>1       Q.   Where is it equipped on your body?</p> <p>2       A.   Currently right in the middle of my chest</p> <p>3   (indicating).</p> <p>4       Q.   Okay. Do you know what brand it is?</p> <p>5       A.   It's a Taser. Or an Axon taser, whatever</p> <p>6   they call it.</p> <p>7       Q.   Axon. So you said right now it's placed on</p> <p>8   your chest and you were motioning towards your chest?</p> <p>9   Was it placed somewhere different in the past?</p> <p>10      A.   Yes.</p> <p>11      Q.   Where was it placed in the past?</p> <p>12      A.   On a little -- like there was a little</p> <p>13   U-shaped collar piece that had a little magnet thing</p> <p>14   that would attach right here on your collar</p> <p>15   (indicating).</p> <p>16      Q.   You're just motioning towards the collar of</p> <p>17   your shirt?</p> <p>18      A.   Yeah.</p> <p>19      Q.   Okay. In 2017 what was the placement?</p> <p>20      A.   I think it was the one above my collar and so</p> <p>21   it would have been the little U-shaped magnet attached</p> <p>22   to the side of your neck or somewhere in that area I</p> <p>23   think (indicating).</p> <p>24      Q.   Okay. And when you're gesturing up towards</p> <p>25   your collar, are we talking about where the lens of the</p>



<p style="text-align: right;">Page 101</p> <p>1 camera is placed?</p> <p>2 A. Yeah. So it's like a little piece of metal</p> <p>3 like I said, U-shaped, right. It's got a little magnet</p> <p>4 on the one side, so it goes under your collar, I think,</p> <p>5 and then the magnet from the side of the camera goes</p> <p>6 right on the collar and the lens would be pointed</p> <p>7 whichever way I'm facing.</p> <p>8 Q. Okay. So the camera lens is basically</p> <p>9 attached to, like, your lapel and pointed in the</p> <p>10 direction you're looking?</p> <p>11 A. Pretty much.</p> <p>12 Q. Okay. And where's the -- where's the control</p> <p>13 module located on the body?</p> <p>14 A. Now or then?</p> <p>15 Q. Then in 2017.</p> <p>16 A. So there was a cord that I would run down and</p> <p>17 I would usually try to put right on my belt, so right</p> <p>18 here on the front of my belt (indicating).</p> <p>19 Q. Okay. And what is the -- what is the module?</p> <p>20 Like, can you describe it?</p> <p>21 A. They're little square -- imagine the size of</p> <p>22 like a deck of playing cards. Maybe the same rough</p> <p>23 width and size-ish, big button in the middle.</p> <p>24 Q. And does it have controls on it?</p> <p>25 A. It's got a little slider switch I think.</p>	<p style="text-align: right;">Page 103</p> <p>1 A. Yes.</p> <p>2 Q. If you're going to question someone, should</p> <p>3 you be recording someone?</p> <p>4 A. There are exclusions for when you're doing</p> <p>5 interviews. I can't think of exactly what they are,</p> <p>6 but I know there are some that you can actually turn it</p> <p>7 off if -- if it's within the policy.</p> <p>8 Q. Can you give me an example of that?</p> <p>9 A. I can't remember. I know that there is</p> <p>10 something that exists for turning it off if you need</p> <p>11 to. I can't remember exactly when or how.</p> <p>12 Q. And do you know where that exclusion is</p> <p>13 today?</p> <p>14 A. I can't think of it right now. I would have</p> <p>15 to review the policy to tell you.</p> <p>16 Q. Do you upload the body camera footage at the</p> <p>17 end of every shift?</p> <p>18 A. I mean, you can plug it in. Is that what you</p> <p>19 mean?</p> <p>20 Q. Yeah, I mean, what do you do with the footage</p> <p>21 that it records?</p> <p>22 A. Label it.</p> <p>23 Q. And store it somewhere?</p> <p>24 A. Yeah, I mean, I guess when you plug it in, it</p> <p>25 uploads.</p>
<p style="text-align: right;">Page 102</p> <p>1 Q. And what does that control?</p> <p>2 A. On and off.</p> <p>3 Q. Is that the only thing you can control on it?</p> <p>4 A. No. There's a button you can activate to</p> <p>5 turn it off.</p> <p>6 Q. Under what circumstances, per SLCPD policy,</p> <p>7 are you required to utilize your body camera as in use</p> <p>8 it to record?</p> <p>9 MS. NICHOLS: Objection to the extent that you're</p> <p>10 asking him to recall a lengthy policy manual.</p> <p>11 But you can testify as to what you recall.</p> <p>12 THE WITNESS: Yeah, I don't remember exactly what</p> <p>13 the policy says, but the way that I understand it is if</p> <p>14 I'm going to make contact with the public I think.</p> <p>15 Q. (BY MR. LUTZ) As in interact with someone on</p> <p>16 the street?</p> <p>17 A. There's been different iterations of it. It</p> <p>18 was only ever on a call and then it became something</p> <p>19 else, then it became something else, and so on and so</p> <p>20 forth.</p> <p>21 Q. So sitting in your car by yourself, probably</p> <p>22 not supposed to be recording?</p> <p>23 A. Not just generally, no.</p> <p>24 Q. But if you're going to make an arrest, should</p> <p>25 you be recording?</p>	<p style="text-align: right;">Page 104</p> <p>1 Q. What do you plug it into?</p> <p>2 A. A little docking station.</p> <p>3 Q. At the station?</p> <p>4 A. Yes.</p> <p>5 Q. And then are you in control of what happens</p> <p>6 with the footage after that?</p> <p>7 A. No.</p> <p>8 Q. Who is?</p> <p>9 A. I have no idea.</p> <p>10 Q. Do you plug it in to upload at the end of</p> <p>11 every shift?</p> <p>12 A. No. I mean, there's shifts that run long and</p> <p>13 then maybe you plug it in the next day. But yeah, I</p> <p>14 mean, 99 percent of the time at the end of your shift</p> <p>15 you don't want to take that home with you, there's no</p> <p>16 reason to, just plug it in.</p> <p>17 As far as I do, I just plug it in so that the</p> <p>18 battery works the next day so I don't run out of juice.</p> <p>19 Q. Okay. To your knowledge, has your body</p> <p>20 camera ever malfunctioned?</p> <p>21 A. Yes.</p> <p>22 Q. How often has that happened?</p> <p>23 A. Like total?</p> <p>24 Q. Yeah. How many times has any body camera</p> <p>25 that you utilized malfunctioned?</p>

<p style="text-align: right;">Page 105</p> <p>1       <b>A.   Five or ten.</b></p> <p>2       Q.   And what was the result of the malfunction?</p> <p>3       <b>A.   What do you mean the result of?</b></p> <p>4       Q.   So what happens? How have they</p> <p>5 malfunctioned?</p> <p>6       <b>A.   I had -- so the one that goes up your collar,</b></p> <p>7 <b>there's a cord that would run down to the control pack.</b></p> <p>8 <b>If I've been like kind of going over fences and</b></p> <p>9 <b>rooftops and that cord is broken, obviously we can't</b></p> <p>10 <b>control it when there's no battery power, no recording.</b></p> <p>11       I've had it kicked off of my chest before</p> <p>12 where the one that I had that was a magnet controlling</p> <p>13 that got booted off. I've had it while I was actually</p> <p>14 in a physical altercation with somebody that the little</p> <p>15 power switch that was on my belt, that actually got</p> <p>16 swiped and just turned the unit off. I've had it run</p> <p>17 out of battery power on me.</p> <p>18       Q.   Have you ran into a situation where the</p> <p>19 footage was damaged or corrupted or anything like that?</p> <p>20       <b>A.   Not that I know of. I have no idea.</b></p> <p>21       Q.   Do they record audio?</p> <p>22       <b>A.   Yes.</b></p> <p>23       Q.   Does it always record audio? If it's</p> <p>24 activated, is it recording audio?</p> <p>25       <b>A.   You can turn it off.</b></p>	<p style="text-align: right;">Page 107</p> <p>1   in a criminal prosecution?</p> <p>2       <b>A.   Probably.</b></p> <p>3       Q.   Have you ever sat on the stand and testified</p> <p>4 as to --</p> <p>5       <b>A.   No.</b></p> <p>6       Q.   -- your own body camera footage?</p> <p>7       <b>A.   No.</b></p> <p>8       Q.   Really? I'm just surprised. I'm not</p> <p>9 questioning your answer.</p> <p>10       But to your knowledge, that footage gets</p> <p>11 admitted in court sometimes, right, as evidence?</p> <p>12       MS. NICHOLS: Objection, calls for speculation.</p> <p>13       <b>THE WITNESS: I actually have no idea. I've never</b></p> <p>14 <b>had my camera be admitted into a court case I've been a</b></p> <p>15 <b>part of.</b></p> <p>16       MR. LUTZ: Okay. Can we talk about the --</p> <p>17 actually, scratch that. Can we actually break now?</p> <p>18       MS. NICHOLS: For lunch?</p> <p>19       MR. LUTZ: And then, yeah, just kind of shift that</p> <p>20 back?</p> <p>21       MS. NICHOLS: Sure.</p> <p>22       Is that all right with you (to the witness)?</p> <p>23       <b>THE WITNESS: (Nods head.)</b></p> <p>24       MR. LUTZ: That would just work better for</p> <p>25 organization if that's all right.</p>
<p style="text-align: right;">Page 106</p> <p>1       Q.   The audio specifically?</p> <p>2       <b>A.   Like you could mute it so it doesn't record</b></p> <p>3 <b>audio.</b></p> <p>4       Q.   Okay. How would you describe the quality of</p> <p>5 the footage produced by the body cameras that you've</p> <p>6 utilized?</p> <p>7       MS. NICHOLS: Objection, vague.</p> <p>8       Q.   (BY MR. LUTZ) Let's be more specific. Is it</p> <p>9 generally clear?</p> <p>10       <b>A.   Sometimes. Sometimes not.</b></p> <p>11       Q.   Do you believe that it can be -- the footage</p> <p>12 that body cameras produce can be helpful in</p> <p>13 understanding the events that it's recorded?</p> <p>14       <b>A.   Yes.</b></p> <p>15       MS. NICHOLS: Objection, vague and calls for</p> <p>16 speculation.</p> <p>17       Q.   (BY MR. LUTZ) Is body camera footage ever</p> <p>18 used to help in criminal prosecutions?</p> <p>19       MS. NICHOLS: Objection, calls for speculation.</p> <p>20       MR. LUTZ: I think you know that from personal</p> <p>21 experience. It's not speculation.</p> <p>22       <b>THE WITNESS: Yes.</b></p> <p>23       Q.   (BY MR. LUTZ) Has your body camera footage</p> <p>24 ever been -- or body camera footage that was recorded</p> <p>25 from the unit you were wearing ever been used to assist</p>	<p style="text-align: right;">Page 108</p> <p>1       <b>THE WITNESS: Yeah.</b></p> <p>2       (Recess taken from 11:44 a.m. to 12:34 p.m.)</p> <p>3       Q.   (BY MR. LUTZ) Officer Fox, I want to talk to</p> <p>4 you about -- in your time with Salt Lake City Police</p> <p>5 Department, have you been trained in the department's</p> <p>6 policy for the use of deadly force?</p> <p>7       <b>A.   Yes.</b></p> <p>8       Q.   What is your understanding of what -- under</p> <p>9 what circumstance you as an officer are permitted to</p> <p>10 use deadly force?</p> <p>11       MS. NICHOLS: Objection, calls for a legal</p> <p>12 conclusion.</p> <p>13       MR. LUTZ: According to Salt Lake City Police</p> <p>14 Department policy.</p> <p>15       <b>THE WITNESS: If it's in defense of myself or</b></p> <p>16 <b>others.</b></p> <p>17       Q.   (BY MR. LUTZ) Is there anything more than</p> <p>18 that?</p> <p>19       <b>A.   I mean, defense of myself and others if</b></p> <p>20 <b>there's -- I can't remember the words they use, but</b></p> <p>21 <b>if -- I think it says to prevent serious harm or death.</b></p> <p>22 <b>I'm not sure exactly what words it is, but basically</b></p> <p>23 <b>harm or death in defense of myself and others.</b></p> <p>24       Q.   Okay. Are you introduced to that policy at</p> <p>25 the academy stage?</p>

<p style="text-align: right;">Page 109</p> <p>1       <b>A.    Yes.</b></p> <p>2       Q.    And is it your understanding that that policy</p> <p>3    is based on a legal standard?</p> <p>4       MS. NICHOLS:  Objection, calls for speculation.</p> <p>5       <b>THE WITNESS:  I believe that it mirrors very, very</b></p> <p>6   <b>closely to the statute here in Utah.</b></p> <p>7       Q.    (BY MR. LUTZ) Which statute are you referring</p> <p>8    to?</p> <p>9       <b>A.    I mean, there's a statute that covers the use</b></p> <p>10   <b>of deadly force.  I can't remember what the actual</b></p> <p>11   <b>statute number is.</b></p> <p>12       Q.    The use of deadly force by a police officer</p> <p>13    or by a civilian in self defense?</p> <p>14       <b>A.    I can't -- I want to say that there's just</b></p> <p>15   <b>one policy for both.  Or not policy, but the statute</b></p> <p>16   <b>would dictate both.  And then I think the policy is</b></p> <p>17   <b>just mirrored off for police policy.  I don't --</b></p> <p>18   <b>honestly, I just don't remember if there is a separate</b></p> <p>19   <b>policy for police or civilians.  I think there's just</b></p> <p>20   <b>one for the use of deadly force.</b></p> <p>21       Q.    Okay.  Have you received training on the</p> <p>22    federal Fourth Amendment standard?</p> <p>23       <b>A.    Yes, in the police academy.</b></p> <p>24       Q.    Can you describe what the federal Fourth</p> <p>25    Amendment prohibits?</p>	<p style="text-align: right;">Page 111</p> <p>1    officer, you are required to undergo continuous</p> <p>2    training; correct?</p> <p>3       <b>A.    Yes.</b></p> <p>4       Q.    Are any of these trainings basically</p> <p>5    refreshers for things that you may have already learned</p> <p>6    at the academy?</p> <p>7       <b>A.    Yes.</b></p> <p>8       Q.    Are you required to undergo continuous</p> <p>9    training on the use of deadly force standard?</p> <p>10       MS. NICHOLS:  Objection, vague and ambiguous.</p> <p>11    Ambiguous as to the term continuous.</p> <p>12       <b>THE WITNESS:  So are you asking if there's like a</b></p> <p>13   <b>minimum number of hours or time spent every year</b></p> <p>14   <b>covering specifically the use of deadly force?</b></p> <p>15       Q.    (BY MR. LUTZ) Is there?</p> <p>16       <b>A.    I don't believe there is.</b></p> <p>17       Q.    But certainly you've encountered refreshers</p> <p>18    on the federal Fourth Amendment standard and the use of</p> <p>19    force standards; right?</p> <p>20       <b>A.    I mean, I would imagine that I've been to</b></p> <p>21   <b>some trainings, sure.</b></p> <p>22       Q.    Any idea how many?</p> <p>23       <b>A.    No.</b></p> <p>24       Q.    In your time with the Salt Lake City Police</p> <p>25    Department, have you been trained on specific scenarios</p>
<p style="text-align: right;">Page 110</p> <p>1       MS. NICHOLS:  Objection, calls for a legal</p> <p>2    conclusion.</p> <p>3       MR. LUTZ:  In terms of use of force.</p> <p>4       <b>THE WITNESS:  Like in reference to search and</b></p> <p>5   <b>seizure or am I thinking of the right Fourth Amendment?</b></p> <p>6       Q.    (BY MR. LUTZ) I'm referring to the federal</p> <p>7    Fourth Amendment of the federal Constitution.</p> <p>8       <b>A.    Right.</b></p> <p>9       Q.    Let me clarify.  Actually, let's go somewhere</p> <p>10   else.  Have you been trained on the Graham factors?</p> <p>11       <b>A.    Graham v. Connor?</b></p> <p>12       Q.    Uh-huh.</p> <p>13       <b>A.    Yes.</b></p> <p>14       Q.    Do you know what those factors are?</p> <p>15       <b>A.    I don't think I would be able to tell you</b></p> <p>16   <b>right off my head, no.</b></p> <p>17       Q.    Are you familiar with Tennessee v. Gardner?</p> <p>18       <b>A.    I am.  Same thing.  I don't think I could</b></p> <p>19   <b>tell you right off my head.</b></p> <p>20       Q.    Do you recall if you've been trained on the</p> <p>21    holding of Tennessee v. Gardner?</p> <p>22       <b>A.    I am aware of Tennessee v. Gardner, so I'm</b></p> <p>23   <b>sure that I've attended trainings for that.  Like I</b></p> <p>24   <b>said, I just can't recall right now.</b></p> <p>25       Q.    As a Salt Lake City Police Department</p>	<p style="text-align: right;">Page 112</p> <p>1    where it would be appropriate to use deadly force?</p> <p>2       <b>A.    Yes.</b></p> <p>3       Q.    And have you ever done trainings, for</p> <p>4    example, in your SWAT trainings where you would role</p> <p>5    play scenarios that might involve the use of deadly</p> <p>6    force?</p> <p>7       <b>A.    Yes.</b></p> <p>8       Q.    Is that a common theme of some of these</p> <p>9    trainings?</p> <p>10       MS. NICHOLS:  Objection, vague.</p> <p>11       <b>THE WITNESS:  Like what do you mean a theme?</b></p> <p>12       Q.    (BY MR. LUTZ) When you're training for</p> <p>13    different SWAT scenarios, for example, you're training</p> <p>14    on circumstances where you would encounter armed</p> <p>15    suspects, for example?</p> <p>16       <b>A.    Yeah.</b></p> <p>17       Q.    That would be a typical subject that some of</p> <p>18    your trainings would touch on?</p> <p>19       <b>A.    Yes.</b></p> <p>20       Q.    Okay.</p> <p>21               (Exhibit 11 marked.)</p> <p>22       Q.    (BY MR. LUTZ) Okay.  Officer Fox, I've handed</p> <p>23    you what's been marked as Exhibit 11.  Do you recognize</p> <p>24    this document?</p> <p>25       MS. NICHOLS:  If I could just note for the record,</p>

<p style="text-align: right;">Page 113</p> <p>1 it appears to be an excerpt starting at page 185 and I</p> <p>2 understand counsel's going to print a cover page to add</p> <p>3 momentarily.</p> <p>4 MR. LUTZ: Correct.</p> <p>5 <b>THE WITNESS:</b> (Peruses document.)</p> <p>6 MR. LUTZ: Go ahead and take a look.</p> <p>7 <b>THE WITNESS:</b> What was the question?</p> <p>8 Q. (BY MR. LUTZ) Do you recognize this document?</p> <p>9 A. I recognize what's in the document. It's a</p> <p>10 printout of policies, but it isn't fashioned in the</p> <p>11 normal way that I review policies, no.</p> <p>12 Q. Okay. Do you recognize the content though?</p> <p>13 A. Yeah, I mean, I would agree it's probably the</p> <p>14 policies; right? I mean, I have no idea if this is</p> <p>15 actually from our policy book or not.</p> <p>16 Q. Okay. So safe to say you haven't committed</p> <p>17 what you see here to memory?</p> <p>18 A. I mean, I've -- not verbatim, no.</p> <p>19 Q. Take a look under the heading Authority to</p> <p>20 Use Deadly Force and then it says "Peace officer's use</p> <p>21 of deadly force: A peace officer, or any person acting</p> <p>22 by his command, in his aid and assistance, is justified</p> <p>23 in using deadly force when," and there's five bullet</p> <p>24 points there, and you see the fifth bullet point there?</p> <p>25 It says "The officer reasonably believes that</p>	<p style="text-align: right;">Page 115</p> <p>1 MS. NICHOLS: Objection, foundation.</p> <p>2 <b>THE WITNESS:</b> I would say yeah, probably.</p> <p>3 Q. (BY MR. LUTZ) Okay. You can put Exhibit 11</p> <p>4 to the side.</p> <p>5 A. (Complies.)</p> <p>6 Q. What does the Salt Lake City Police</p> <p>7 Department's use of force -- use of deadly force policy</p> <p>8 prohibit?</p> <p>9 MS. NICHOLS: Objection, vague.</p> <p>10 <b>THE WITNESS:</b> I'm not sure what -- if I have the</p> <p>11 policy right here, can I read it and I can tell you</p> <p>12 exactly what it says in the policy?</p> <p>13 MR. LUTZ: I'd like to know your understanding in</p> <p>14 your experience.</p> <p>15 <b>THE WITNESS:</b> I guess I'm not understanding what</p> <p>16 it prohibits. I'm struggling to recall what it says</p> <p>17 about prohibiting anything. I'm sure there's plenty of</p> <p>18 stuff it prohibits, but I'm not sure.</p> <p>19 Q. (BY MR. LUTZ) Phrased another way, what does</p> <p>20 the policy require?</p> <p>21 A. In order to use deadly force?</p> <p>22 Q. Uh-huh. Yes.</p> <p>23 A. I think it says something that I would have</p> <p>24 to have reasonable belief that I'm in fear for my</p> <p>25 safety or the safety of others to prevent serious</p>
<p style="text-align: right;">Page 114</p> <p>1 the use of deadly force is necessary to prevent death</p> <p>2 or serious bodily injury to the officer or another</p> <p>3 person."</p> <p>4 See that?</p> <p>5 A. Yes.</p> <p>6 Q. Is that what you were referring to when you</p> <p>7 were explaining your understanding to me of the</p> <p>8 department's policy on use of deadly force?</p> <p>9 A. Yes.</p> <p>10 MS. NICHOLS: Objection, foundation.</p> <p>11 Go ahead.</p> <p>12 <b>THE WITNESS:</b> Sorry. Yes, I do. Or that's what I</p> <p>13 was recalling from memory, yes.</p> <p>14 Q. (BY MR. LUTZ) I'm going to hand you a cover</p> <p>15 page to the exhibit. So we've just added a cover page</p> <p>16 to the excerpt.</p> <p>17 A. Sure.</p> <p>18 Q. What's the title of that cover page?</p> <p>19 A. Are you asking me?</p> <p>20 Q. Yes.</p> <p>21 A. Salt Lake City Police Department Policies and</p> <p>22 Procedures Manual Updated on October 13th, 2017.</p> <p>23 Q. Okay, great. So safe to say the excerpt of</p> <p>24 the policies we just looked at were the ones in effect</p> <p>25 on October 2017?</p>	<p style="text-align: right;">Page 116</p> <p>1 bodily harm. It goes back to that same paragraph that</p> <p>2 we pointed out.</p> <p>3 Q. Are there other circumstances where you're</p> <p>4 permitted to use deadly force other than the one you</p> <p>5 just described?</p> <p>6 A. I know that, you know, again, that would be</p> <p>7 convoluting between what I know the statute reads and</p> <p>8 what our policy reads. I'm not sure where it</p> <p>9 differentiates. And there's four other bullets that I</p> <p>10 can't a hundred percent say from memory exactly when</p> <p>11 the other times, but I believe that at least within the</p> <p>12 state statute, that it covers other times. So I don't</p> <p>13 know. I'm not sure.</p> <p>14 Q. So if you are evaluating whether or not it</p> <p>15 would be appropriate to use deadly force, are you</p> <p>16 thinking about the state statute or are you thinking</p> <p>17 about the departmental policy or are you thinking about</p> <p>18 something else?</p> <p>19 A. If I'm attempting?</p> <p>20 Q. Yes.</p> <p>21 A. The only time that I've ever been faced with</p> <p>22 a question of whether using deadly force or not it's</p> <p>23 been in that one specific category, so I'm probably</p> <p>24 weighing it against what policy matches the state</p> <p>25 statute on, so it would essentially, I think, be</p>

Page 117

1 covering both. I'm not trying to pick one or the  
2 other. I'm just focusing on that one particular  
3 paragraph, if that's the most prudent one to decide at  
4 the moment.

5 Q. Okay. All right. Let's talk about August  
6 13th, 2017. Were you working that day as a patrol  
7 officer?

8 A. I believe so, yes.

9 Q. What shift?

10 A. I believe I was on the graveyard shift.

11 Q. What hours is the graveyard shift?

12 A. I work graveyards right now, but we do 12s  
13 and it's 6:00 to 6:00. I think it's 9:00 to 7:00. Or,  
14 I'm sorry, it was 9:00 to 7:00. I actually don't know  
15 if it's still 9:00 to 7:00, but I think the hours of  
16 that shift was 9:00 to 7:00 p.m.

17 Q. 9:00 p.m. to 7:00 a.m.?

18 A. Yes. Sorry.

19 Q. Okay. Can you walk me through what happened  
20 after you started your shift that day on August 13th,  
21 2017?

22 MS. NICHOLS: Objection, vague, calls for a  
23 narrative.

24 THE WITNESS: So I know on that night, I mean,  
25 every shift, most every shift begins with a lineup, so

Page 118

1 we had lineup. We cleared lineup and then I ended up  
2 in the, what we call P1. It's just the first level of  
3 our parking garage. And me and Scott Robinson were, I  
4 think, just having a conversation.

5 Q. (BY MR. LUTZ) Okay. Going back, what's  
6 lineup?

7 A. Morning briefing.

8 Q. Do you recall anything in particular about  
9 that morning briefing?

10 A. Like as far as in?

11 Q. Just anything that stands out in your mind.

12 A. Not really. It was just a normal briefing.  
13 I mean, you show up after briefing.

14 Q. Okay. Nothing out of the ordinary?

15 A. No.

16 Q. Okay. So you're having a conversation with  
17 Scott Robinson. About what time was that?

18 A. I have no idea. Immediately -- if we're  
19 there at 9:00, and that's if 9:00, I don't remember  
20 exactly what time the briefing went to, but it would  
21 have been following immediately after that. If it  
22 wasn't 9:00, it might have been 10:00. I don't  
23 remember.

24 Q. Okay.

25 A. But, yeah, so whatever the duration was, then

Page 119

1 we went out. I think we were having a conversation in  
2 the parking lot. Honestly, I don't remember.

3 Q. Okay. So at this point you're still at the  
4 PSB?

5 A. Yes.

6 Q. Okay. At some point did you leave?

7 A. Yes.

8 Q. Why did you leave?

9 A. So Officer Smith had requested for a back and  
10 so me and Kris, or sorry, me and Scott left to go back  
11 him.

12 Q. Okay. So by that, just to clarify, Officer  
13 Kris Smith radioed for backup patrol officers?

14 A. Yes.

15 Q. And you and Officer Scott Robinson decided to  
16 respond to that request?

17 A. Yes.

18 Q. What did you do next?

19 A. We ended up driving to the scene and ended up  
20 backing Kris.

21 Q. Okay. Did Officer Smith provide any more  
22 information in the call about why he was calling for a  
23 backup?

24 A. Not that I recall, no.

25 Q. Do you recall what the request was or what

Page 120

1 words were used?

2 A. I think he called for a 1078.

3 Q. What is that?

4 A. It's just I need a backup. So if you call  
5 for a 1078, it's just like saying hey, I need somebody  
6 to come back me.

7 Q. Okay. So that's all the information you had  
8 heading out there --

9 A. I believe so.

10 Q. -- to go meet Officer Smith? Okay.

11 How long did it take you to arrive at Officer  
12 Smith's location?

13 A. A minute or two.

14 Q. Okay. What happened when you got there?

15 A. As soon as we got there, I walked up and I  
16 met with Patrick Harmon.

17 Q. Okay. Can you help me lay the scene a little  
18 bit as you arrive. So where was Officer Smith when you  
19 arrived?

20 A. If he wasn't walking to his car, then he was  
21 already in his car when I pulled up, but I am not a  
22 hundred percent certain. I think he was in his car  
23 already.

24 Q. Okay.

25 A. But I'm not -- I don't remember a hundred



<p style="text-align: right;">Page 121</p> <p>1 percent. He might have been on his way to his car,  2 getting into his car as I pulled up. I don't remember.  3 Q. You mentioned Patrick Harmon.  4 A. Yeah.  5 Q. Did you see Patrick Harmon somewhere in that  6 area?  7 A. Yes.  8 Q. Where was he in relation to Officer Smith?  9 A. You'd call it 1:00 o'clock. Off the tip of  10 his car.  11 Q. Okay. And what was Patrick Harmon doing?  12 A. He was straddling a bicycle.  13 Q. And did you know who that was at that time or  14 do you only now know that that's Patrick Harmon?  15 A. I did not know who that was at the time.  16 Q. Okay. Where did you -- you drove up in your  17 patrol car; correct?  18 A. Yes.  19 Q. Where did you park it?  20 A. Directly behind Kris's car.  21 Q. Okay. And where was Officer Robinson in  22 relation to you when you arrived?  23 A. I think he was directly behind me.  24 Q. Okay.  25 A. I'm pretty sure that's where he was.</p>	<p style="text-align: right;">Page 123</p> <p>1 A. Um, so I don't know. I mean, I don't know  2 exactly what the interaction we had was, but one of the  3 first things I did was ask him to just kind of step off  4 his bicycle.  5 Q. Okay. And he had been straddling it up to  6 that point?  7 A. Yes.  8 Q. After you asked him to step off of his  9 bicycle, did he comply with you?  10 A. Yes, he did.  11 Q. Do you recall what he was wearing?  12 A. It was a black t-shirt, dark colored. I  13 don't think they were black jeans, but super dark blue  14 jeans, backpack, glasses, and he had a necklace of some  15 sort.  16 Q. Did he have anything else on his person?  17 A. What do you mean?  18 Q. Did he have a backpack? Sorry. Go ahead.  19 A. Yeah, I said backpack.  20 Q. Oh. Okay. So Mr. Harmon gets off the bike.  21 What did you say to him next?  22 A. I have no idea.  23 Q. Under the circumstances is there something  24 that you ordinarily would have done?  25 A. No, not really.</p>
<p style="text-align: right;">Page 122</p> <p>1 Q. Okay. So the three patrol cars are in a  2 line; is that right?  3 A. Yeah. As far as I can remember, yeah, I  4 believe so.  5 Q. Officer Smith is in the front closest to  6 Patrick Harmon followed by you, followed by Officer  7 Robinson --  8 A. Yes.  9 Q. -- behind you?  10 A. Yes.  11 Q. After you pulled up behind Officer Smith,  12 what did you do next?  13 A. Like I said, I walked up and met with  14 Patrick.  15 Q. Did you stop and talk to Officer Smith first?  16 A. I don't believe I did.  17 Q. And what was the distance between Mr. Harmon  18 and Officer Smith's car?  19 A. A couple of feet.  20 Q. And what was Mr. Harmon doing when you  21 approached him?  22 A. He was straddling his bicycle.  23 Q. And did you say anything to him?  24 A. Yeah, I probably said hi.  25 Q. Anything else?</p>	<p style="text-align: right;">Page 124</p> <p>1 Q. Did Mr. Harmon say anything to you?  2 A. So I don't know. I mean, at some point we  3 engaged each other back and forth. What was said I  4 don't know, but we definitely had a conversation, but I  5 just don't know what it was about.  6 Q. And had you activated your body camera at  7 this point?  8 A. So as I came walking up, I thought I had  9 double tapped my button. Apparently it hadn't  10 activated. It was later on the stop I activated it.  11 So at that point, no, I don't think it was recording  12 any audio or video.  13 Q. Okay. So do you recall anything that Patrick  14 Harmon said to you?  15 A. So I know during that interaction, like I  16 say, I don't know if I said something to him or if he  17 said something to me, but through the interaction he  18 started telling me something about warrants. He told  19 me he was trying to get right with God. He told me  20 that he was trying to take care of his stuff. I mean,  21 for the most part it was a lot of him saying he was  22 trying to get right with God.  23 And I remember telling him, I was like all  24 right, cool, man. I was like if that seems to be the  25 case, you know, we can try to help you take care of the</p>

<p style="text-align: right;">Page 125</p> <p>1 warrants if that's going to help you get your life in</p> <p>2 order and do whatever else. I don't know exactly what</p> <p>3 was said, but something along those lines.</p> <p>4 Q. Okay. Can you describe his demeanor?</p> <p>5 A. Yeah. At the beginning he seemed what</p> <p>6 appeared -- I mean, he seemed more in line with what is</p> <p>7 considered to be normal on a stop like that, what I</p> <p>8 would think is normal. He didn't seem frantic or</p> <p>9 emotional. As it kind of developed, he did become</p> <p>10 emotional and he seemed very either anxious or</p> <p>11 agitated, or whatever the right word would be to</p> <p>12 describe.</p> <p>13 But he definitely got -- he wanted a</p> <p>14 cigarette, so I let him have a cigarette, and that was</p> <p>15 to try to calm his nerves because he was getting a</p> <p>16 little bit more kind of antsy if that makes sense.</p> <p>17 Q. Okay. And when you say as it developed,</p> <p>18 just -- do you mean just as the time continued to pass?</p> <p>19 A. Yes. Yes.</p> <p>20 Q. Okay. And at some point -- well, let's go</p> <p>21 back. Where are Officers Smith and Robinson at that</p> <p>22 point in relation to you and Mr. Harmon?</p> <p>23 A. So I believe Kris is in the driver seat of</p> <p>24 his car and I think Scott is actually standing next to</p> <p>25 the window on the passenger side.</p>	<p style="text-align: right;">Page 127</p> <p>1 exactly what words I just used, but, yeah, anxious. He</p> <p>2 was a little bit more -- he was becoming a little bit</p> <p>3 more emotional.</p> <p>4 Q. Were you concerned about that?</p> <p>5 A. Not at the time, no.</p> <p>6 Q. Okay. That didn't make you feel that your</p> <p>7 safety was -- that your safety was under some kind of</p> <p>8 threat?</p> <p>9 A. No.</p> <p>10 Q. Okay. So some amount of time passes, I think</p> <p>11 you said a minute or two, Officers Smith and Robinson</p> <p>12 approach you. What does Officer Smith do?</p> <p>13 A. I believe he just immediately started to</p> <p>14 engage Patrick.</p> <p>15 Q. Verbally?</p> <p>16 A. Yes.</p> <p>17 Q. Do you recall what he said?</p> <p>18 A. Something about him having a warrant I think.</p> <p>19 I don't remember exactly what it was, but he said</p> <p>20 something about him having a warrant.</p> <p>21 Q. Where are you standing in relation to</p> <p>22 Mr. Harmon at this point?</p> <p>23 A. I would have been between the patrol car.</p> <p>24 Like if this is the bumper of the patrol car, I would</p> <p>25 have been just directly in front, maybe a little bit</p>
<p style="text-align: right;">Page 126</p> <p>1 Q. Okay. And do you know if they're having a</p> <p>2 discussion?</p> <p>3 A. I don't know what they were doing.</p> <p>4 Q. Okay. At some point did either or both of</p> <p>5 the officers come to where you and Mr. Harmon are?</p> <p>6 A. Yes.</p> <p>7 Q. About how long were you standing there with</p> <p>8 Mr. Harmon before the other officers approached you</p> <p>9 both?</p> <p>10 A. Honestly, I think it was only like a minute,</p> <p>11 maybe two, but I don't -- I'm not a hundred percent</p> <p>12 sure. I think it was just a couple minutes though.</p> <p>13 Not long.</p> <p>14 Q. Did you have any sense that Mr. Harmon was</p> <p>15 intoxicated?</p> <p>16 A. No.</p> <p>17 Q. And did -- up to this point in the</p> <p>18 interactions, so before the other officers had come to</p> <p>19 join you, had he done -- had Mr. Harmon presented any</p> <p>20 sort of threatening behavior?</p> <p>21 A. No.</p> <p>22 Q. Were you concerned about what you were</p> <p>23 describing as sort of his growing, how did you describe</p> <p>24 it?</p> <p>25 A. Either anxious or agitated. I can't remember</p>	<p style="text-align: right;">Page 128</p> <p>1 right of center, wherever the -- I think at one point I</p> <p>2 was actually sitting on the hood of the car. I might</p> <p>3 have just like leaned back against it just kind of</p> <p>4 hanging out.</p> <p>5 Q. Okay. Facing Mr. Harmon?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. And then where is Officer Smith when</p> <p>8 he begins to verbally engage Mr. Harmon?</p> <p>9 A. So he comes up off of my left side and would</p> <p>10 have positioned himself at some point -- I think a</p> <p>11 little bit of the conversation happened almost as he's</p> <p>12 like right in line, maybe just a little bit forward of</p> <p>13 being on line with me, and that's where he kind of</p> <p>14 starts to actually talk to Patrick I think.</p> <p>15 Q. So sort of to your side and to Mr. Harmon's</p> <p>16 side?</p> <p>17 A. A little bit, yeah.</p> <p>18 Q. Would it be to the right side and your left</p> <p>19 side?</p> <p>20 A. Yeah.</p> <p>21 Q. Okay. And at the same time, where is Officer</p> <p>22 Robinson?</p> <p>23 A. So he came from, again, the passenger side,</p> <p>24 and he walked up, and I think he walked a little bit</p> <p>25 more forward of what would have been like on line with</p>

<p style="text-align: right;">Page 129</p> <p>1 us, so he ended up just going to my right and forward a</p> <p>2 little bit which would have been Patrick's left and</p> <p>3 just almost directly to his side. I think somewhere in</p> <p>4 that area.</p> <p>5 Q. Okay. And did Officer Robinson say anything</p> <p>6 during this time?</p> <p>7 A. I don't think so.</p> <p>8 Q. I think that you said that Officer Smith said</p> <p>9 something to Mr. Harmon about having a warrant?</p> <p>10 A. (Nods head.)</p> <p>11 Q. Prior to that, did you know anything about a</p> <p>12 warrant with Mr. Harmon?</p> <p>13 A. So I believe, in the conversation that I was</p> <p>14 having with him, he mentioned something about either</p> <p>15 charges or a warrant. I don't remember exactly how the</p> <p>16 conversation went. He mentioned that he was trying to</p> <p>17 take care of something. And I can't remember if he</p> <p>18 said I'm trying to take care of my charges which</p> <p>19 doesn't necessarily mean a warrant, but he also might</p> <p>20 have said something about I'm trying to take care of my</p> <p>21 warrant. I just don't remember how the conversation</p> <p>22 went. But I believe it was something to that effect</p> <p>23 either way, but I don't remember. I don't recall.</p> <p>24 Q. And did Officer Smith mention to you or</p> <p>25 Mr. Harmon what the warrant was for?</p>	<p style="text-align: right;">Page 131</p> <p>1 A. So he would have been like here and the bike</p> <p>2 would have been somewhere right here (indicating).</p> <p>3 Q. Okay. So you're motioning --</p> <p>4 A. Sorry. Yeah, so he was . . .</p> <p>5 Q. Want to draw it?</p> <p>6 A. I mean, I'm a terrible artist.</p> <p>7 Q. You can just mark it with circles and lines.</p> <p>8 A. So if the red line is the gutter and that is</p> <p>9 the car, I would have been right there (indicating).</p> <p>10 Q. Near the X?</p> <p>11 A. I believe I -- yeah, I would be the X. I can</p> <p>12 write "me" if that helps. Bike is about right there</p> <p>13 (indicating).</p> <p>14 Q. Okay.</p> <p>15 A. And I'm just going to draw a big circle to</p> <p>16 that general area because that's about where Patrick</p> <p>17 would have been.</p> <p>18 Q. Okay.</p> <p>19 A. So something --</p> <p>20 Q. And can you mark on there where the other two</p> <p>21 officers were.</p> <p>22 A. At which point?</p> <p>23 Q. At the point where Officer Smith has told</p> <p>24 Mr. Harmon he's -- something about a warrant, he --</p> <p>25 Officer Smith has taken control of the left arm and</p>
<p style="text-align: right;">Page 130</p> <p>1 A. No.</p> <p>2 Q. Did Officer Smith mention to you or</p> <p>3 Mr. Harmon what the crime was of the warrant?</p> <p>4 A. No.</p> <p>5 Q. Okay. They have this exchange. What happens</p> <p>6 next?</p> <p>7 A. So at that point I think Kris goes a little</p> <p>8 bit more directly to Patrick's right side and attempts</p> <p>9 to, like, take the backpack off and starts to, I think,</p> <p>10 try to grab his right hand to take control of it to be</p> <p>11 able to handcuff.</p> <p>12 Q. And what did Officer Robinson do around this</p> <p>13 same time?</p> <p>14 A. So he approached from the other side and I</p> <p>15 either tried to help with the backpack or something. I</p> <p>16 think he was also trying to get the left hand to take</p> <p>17 that under control.</p> <p>18 Q. Okay. Where is the bicycle?</p> <p>19 A. So, I mean, where I was standing it would</p> <p>20 have been maybe just a little bit forward and to the</p> <p>21 right of me.</p> <p>22 Q. Okay.</p> <p>23 A. Just like right along the gutter.</p> <p>24 Q. Was the bicycle in between you and Mr. Harmon</p> <p>25 at this point in your interaction?</p>	<p style="text-align: right;">Page 132</p> <p>1 Officer Robinson has taken control of the other arm.</p> <p>2 A. (Indicating.)</p> <p>3 That's KS for Kris Smith and that's SR for</p> <p>4 Scott Robinson.</p> <p>5 Q. Okay, great. Thank you.</p> <p>6 (Exhibit 12 marked.)</p> <p>7 Q. (BY MR. LUTZ) Okay. And I understand what</p> <p>8 happens next is fast. Can you just walk me through</p> <p>9 your memory of the next several seconds.</p> <p>10 A. So as they start to pull the backpack off, I</p> <p>11 know that they -- so they've got his hands, they've</p> <p>12 gotta get the backpack off, they gotta disconnect,</p> <p>13 reconnect, backpack comes off, and at about that point</p> <p>14 Patrick rips his hands out of the control from what</p> <p>15 Kris and Scott had and then he takes off running.</p> <p>16 Q. Where does he run?</p> <p>17 A. He ran between the bicycle and Scott towards</p> <p>18 the sidewalk.</p> <p>19 Q. Okay. And about -- did he change direction</p> <p>20 at some point?</p> <p>21 A. Yes.</p> <p>22 Q. About how far did he run before he changed</p> <p>23 direction?</p> <p>24 A. I mean, from wherever he was standing to</p> <p>25 almost exactly where the sidewalk is. I just can't</p>

Page 133

1 remember if there's a grass park strip or if it just  
 2 goes gutter, sidewalk, and then grass because I know  
 3 there's grass on the other side. I don't -- I don't  
 4 remember. Five to ten feet-ish. I don't know.  
 5 Q. What did you do when Mr. Harmon kind of broke  
 6 free of the other two officers?  
 7 A. I started to try to chase him.  
 8 Q. Did you reach out and try to grab him?  
 9 A. At one point I think I did, yes.  
 10 Q. Okay. Walk me through what happened next.  
 11 A. So as soon as Patrick started to run, he was  
 12 reaching for his right pocket. He said something to  
 13 the effect of I'll cut you, or he used the word cut,  
 14 and I believe what he said is I'll cut you. At some  
 15 point whatever Scott had going on, he ends up falling  
 16 down, and then that's when Patrick changes direction  
 17 and starts running south on the sidewalk.  
 18 Q. So Officer Robinson fell down and then  
 19 Mr. Harmon turned south?  
 20 A. Yeah, so the way that at least I perceived it  
 21 was as soon as he took off running, he was running more  
 22 what would be west towards the sidewalk. He didn't  
 23 really break either direction until after he -- either  
 24 Scott fell or he pushed Scott, or however that  
 25 happened, I don't know. But once he was no longer

Page 134

1 trying to engage with Scott, he ended up going south on  
 2 the sidewalk.  
 3 Q. Okay. And you said you had let him have a  
 4 cigarette to calm his nerves?  
 5 A. Yes.  
 6 Q. At the time you broke away, did he still have  
 7 that cigarette in his mouth?  
 8 A. I believe so, yes.  
 9 Q. So after he makes that turn that we just  
 10 discussed in a southward direction I believe; correct?  
 11 A. I believe so, yes.  
 12 Q. What did he do then?  
 13 A. So once he -- once Scott wasn't holding on to  
 14 him anymore, he started kind of running. He was  
 15 stilling digging in his right pocket as he ran south on  
 16 the sidewalk.  
 17 Q. Okay. And where were you in relation to him?  
 18 A. At that point I had kind of pulled in  
 19 directly behind him on the sidewalk as he was running.  
 20 Q. Okay. But you could see him reaching into  
 21 his right pocket?  
 22 A. For a second, yeah.  
 23 Q. Where is Officer Smith?  
 24 A. Honestly, at that point I have no idea. He  
 25 was off to the left. As soon as we took running right,

Page 135

1 he was no longer in my field of vision. And then even  
 2 when I turned left as we started moving south along  
 3 that sidewalk, I had yet to see him or see where he  
 4 was. I just -- through the commotion I could hear that  
 5 he was somewhere right here. I just -- he was off to  
 6 my left and behind my field of view, so I don't really  
 7 know what his position was (indicating).  
 8 Q. Okay. At what point did you draw your gun?  
 9 A. So I believe I drew my gun as we -- again,  
 10 where Patrick started to run from moving past the bike  
 11 through the curb, when he said I'll cut you, that's  
 12 when I drew my gun.  
 13 Q. How close were you physically to him at that  
 14 point?  
 15 A. Arms length to arm and a half.  
 16 Q. Were you attempting to grab him while you  
 17 attempted to draw your gun?  
 18 A. I don't think so. Honestly, at that point  
 19 I'm not a hundred percent sure if I was actually  
 20 grabbing him, if it happened simultaneous or one or the  
 21 other, but, I mean, just through a snapshot of a  
 22 moment, it was -- it could have -- those two things  
 23 could have overlapped.  
 24 I do believe I reached out and tried to grab  
 25 him at one point. You know, not a hundred percent sure

Page 136

1 exactly what was going on in that specific moment, but,  
 2 yeah, those two things might have overlapped; if I was  
 3 actually trying to reach out and grab him or whatever  
 4 and then drawing my gun.  
 5 Q. Okay. And how much time has elapsed since  
 6 Mr. Harmon initially broke free from the other  
 7 officers?  
 8 A. Fraction of a second. Half a second.  
 9 Q. Okay. So Mr. Harmon is running southward,  
 10 you've lost sight of Kris. Where is Robinson?  
 11 A. Last I saw him he was on the ground. I'm not  
 12 sure.  
 13 Q. Okay. What happened in those next several  
 14 seconds?  
 15 A. So as Patrick was running, he starts to turn  
 16 his feet. I know that as he was running, the one thing  
 17 I was able to perceive was his right foot turning,  
 18 planting, and him changing directions from now running  
 19 away from me to now turning to try to come back at me.  
 20 Q. Okay. What did you do in response to that  
 21 motion?  
 22 A. So I tried to stop.  
 23 Q. And did Mr. Harmon actually start moving back  
 24 towards you?  
 25 A. I don't think he actually started moving back

Page 137

1 at me yet.

2 Q. Had he turned around to face you?

3 A. I believe he was turning to face me. I don't  
4 know if he ever actually got squared up with me, if it  
5 was a half turn, quarter turn, but he was turning back  
6 at me.

7 Q. What's happening with the rest of his body  
8 language in this moment?

9 A. What do you mean?

10 Q. What's he -- is he doing anything with his  
11 hands?

12 A. Yeah. So as soon as he planted his right  
13 foot, as he was doing that, he yelled at me and he said  
14 I'll fucking stab you. As he planted that right foot  
15 and he said that, I thought oh, no, whatever was in his  
16 pocket, he got out. So from seeing his foot, I looked,  
17 I was trying to see if his hand was still in his  
18 pocket, it wasn't. By the time I was able to track and  
19 find his hand, his hand was up somewhere chest to  
20 shoulder height and he was holding a knife.

21 Q. Up until this point you had not seen anything  
22 in his hands?

23 A. Up until that point, he did not have anything  
24 in his hands.

25 Q. But in this moment that you're saying that he

Page 138

1 turned, you saw a knife in his hand?

2 A. Yes.

3 Q. Are you certain?

4 A. Hundred percent.

5 Q. Could you be mistaken?

6 A. Nope.

7 Q. What color was the knife?

8 A. I don't know what the color the handle was,  
9 but the blade was silver-grayish as a knife blade would  
10 be.

11 Q. Okay. What did you do next?

12 A. I shot him.

13 Q. How many times?

14 A. Three times.

15 Q. Where were you aiming?

16 A. So as his hand came back around and I was  
17 able to -- at one point I know, as my gun was coming  
18 up, I was covering just center mass as we're trained.  
19 I tracked where his pocket was and his hand wasn't in  
20 his pocket anymore.

21 By the time I saw his hand, his hand had the  
22 knife in it, so I came back to my front sight post and,  
23 as far as I could tell, I was trying to aim center  
24 mass. That was -- that was, I think, my intent when I  
25 was aiming at him. But, yeah, like, with the black

Page 139

1 shirt and everything, it just -- I don't know exactly.

2 Like, center mass.

3 Q. Did you hear Officer Smith's taser go off?

4 A. I did not.

5 Q. Walk me through the next few seconds after  
6 you fired the three shots.

7 A. So as soon as I shot, Patrick fell down and I  
8 maintained cover, and Scott had called backup and he --  
9 so first -- so Patrick goes down, I stay on gun, Kris  
10 actually calls out on the radio, and then Scott says  
11 that he'll handcuff him. I can't remember exactly what  
12 the exchange was, but he said he would cuff him, or  
13 whatever he said, and then I kind of confirmed to him  
14 that I would stay to cover Patrick.

15 Q. Okay. And you and the other -- all three  
16 officers approached Mr. Harmon on the ground and began  
17 emergency medical procedures; right?

18 A. So I believe that those two do. I had not  
19 got rubber gloves to put in my pocket for that shift,  
20 so I actually had to go back to my car to get my rubber  
21 gloves to go back up, and then yes, I did.

22 Q. Okay. Let's go -- let's go back to the  
23 seconds before you fired on Mr. Harmon. What did you  
24 say?

25 A. I said I'll fucking shoot you.

Page 140

1 Q. And how soon after he said that did you fire  
2 your shot?

3 A. Almost instantaneous I think.

4 Q. Why didn't you give Mr. Harmon more time to  
5 surrender?

6 A. He was turning back at me with a knife in his  
7 hand and he said he would stab me.

8 Q. Did you intend "I'll fucking shoot you" to be  
9 an opportunity for him to surrender?

10 A. I did not intend for it to be anything. I  
11 think it was more of a response to the "I'll fucking  
12 stab you," and I think that it was just something that  
13 through the split second it was happening hearing that,  
14 it was just, as I'm trying to perceive everything, just  
15 what came out.

16 Q. After you said that, is there anything that  
17 Mr. Harmon could have done to prevent you from opening  
18 fire on him?

19 MS. NICHOLS: Objection, calls for speculation.

20 THE WITNESS: At that point probably not.

21 Q. (BY MR. LUTZ) What was the lapse in time  
22 between when you say Mr. Harmon said I'll stab you?

23 A. He said I'll fucking stab you.

24 Q. Fucking stab you and you saying I'll fucking  
25 shoot you?



Page 141

1 A. He said that and I think my  
2 brain just immediately was like well, what the hell's  
3 going on. So I think that happened. I don't know that  
4 there was -- if you're able to measure that amount of  
5 time, I don't know what that measurement is. So it's  
6 so close that it was almost instantaneous after.

7 Q. Do you know where you hit Mr. Harmon?

8 A. I believe he was hit once in the hip, once in  
9 the butt cheek, or buttocks somewhere, and I think once  
10 in the arm.

11 Q. All three shots landed on his body?

12 A. I believe so.

13 Q. And you know now that Officer Smith's taser  
14 probes also impacted Mr. Harmon?

15 A. After the fact, yes.

16 Q. Okay. You did not know that, but you know it  
17 now?

18 A. I did not know then, yeah.

19 Q. You fire the shots, you stay essentially the  
20 same position as where you shot from in those first  
21 moments?

22 A. Yes.

23 Q. Officer Smith continues towards Mr. Harmon on  
24 his left side, Officer Robinson then has gotten up on  
25 your right side and is coming towards where

Page 142

1 Mr. Harmon's laying, correct, as you stayed in place?

2 A. Sorry. Say that again.

3 Q. In the seconds right after you fired the  
4 shots --

5 A. Right.

6 Q. -- you stop moving?

7 A. Yeah.

8 Q. Officer Smith is on your left side and he  
9 begins to approach Mr. Harmon. He says -- he says,  
10 "Priority shots fired" on the radio and he starts  
11 walking towards Mr. Harmon kind of where his feet are  
12 and, at the same time, Officer Robinson is coming  
13 around from your right side also towards Mr. Harmon?

14 MS. NICHOLS: Objection, compound.

15 THE WITNESS: So, genuinely, I don't remember a  
16 hundred percent how far Kris moved forward once the  
17 shots were fired. I do remember Scott being on this  
18 side and him communicating to me, so I actually looked  
19 at him (indicating). Kris's communication was  
20 basically to the radio while it's to everybody that's  
21 got radios, right? That's -- that was to everybody, so  
22 I didn't necessarily focus on him.

23 I focused on Scott who, again, I don't  
24 remember exactly what he said, but it was something to  
25 the effect of I'll cuff him or I'll cover him or

Page 143

1 something. I gave him an affirmative that I would do  
2 whatever he was asking me to do or I was going to cover  
3 him with my gun still, and then he -- I moved up first.  
4 I'm not a hundred percent sure when Kris does.

5 Q. (BY MR. LUTZ) At this point in time you're  
6 absolutely certain Mr. Harmon has a knife?

7 A. A hundred percent.

8 Q. But you didn't warn Officer Robinson about  
9 that knife as he approached Mr. Harmon?

10 A. No.

11 Q. And Mr. Harmon is still alive at this point?

12 A. Yes.

13 Q. And you don't know where that knife is?

14 A. No.

15 Q. And you didn't see it fall out of his hand?

16 A. No.

17 Q. So Mr. Harmon very well was -- he was alive  
18 and he very well could have been armed with that knife  
19 as Officer Robinson approached?

20 MS. NICHOLS: Objection, calls for speculation.

21 THE WITNESS: Yes.

22 MR. LUTZ: Can we change these to just form  
23 objections and if I want to fix the question, I will  
24 ask Mr. Harmon. These are coaching.

25 MS. NICHOLS: These are just regular objections.

Page 144

1 MR. LUTZ: Can we just object to form and then I  
2 can clarify. It's a signal to him to have to rephrase  
3 the question.

4 MS. NICHOLS: That -- I mean, if you think the  
5 questions are objectionable, I'll switch to form, but I  
6 think they're, you know, certainly objectionable.

7 MR. LUTZ: Thank you. Make your objection.

8 Q. (BY MR. LUTZ) Same time, Officer Robinson  
9 approaches Mr. Harmon from the right, places the  
10 handcuffs, you don't mention a knife to him. Right  
11 around that same time period, or shortly thereafter,  
12 Officer Smith approaches Mr. Harmon from your left  
13 side; correct?

14 MS. NICHOLS: Objection as to form.

15 THE WITNESS: So, again, I don't -- I don't  
16 remember a hundred percent as to when Kris actually  
17 approached.

18 Q. (BY MR. LUTZ) Okay. But --

19 A. So I can definitely say yes to the part with  
20 Scott. I'm not a hundred percent sure when Kris comes  
21 up off the left side.

22 Q. But Officer Smith did approach Mr. Harmon on  
23 the ground at some point?

24 A. Eventually. I think so, yeah.

25 Q. And you didn't warn Officer Smith about a

Page 145

1 knife?

2 A. No. I think what -- no, I did not.

3 Q. Okay. Why not?

4 A. So I think everything had happened so fast  
5 that I was still trying to process what happened. As  
6 Kris was giving the communications and Scott said that,  
7 Patrick was, I believe, had fallen over and was almost  
8 completely face down, was not moving, his breathing was  
9 not normal, and so in that particular moment he was not  
10 a threat. He was not moving.

11 It's definitely a tactical error on my part  
12 where I maybe should have said something, but other  
13 than it happened so quick, he seemed incapacitated, and  
14 I didn't see in the moment where there was any further  
15 danger to Scott. If there was I think I would have  
16 tried to stop him from moving up, but in that moment I  
17 didn't see that that was necessary.

18 Q. And Officer Robinson didn't secure the knife  
19 either; right?

20 A. I have no idea.

21 Q. Okay. Let's do a hypothetical. Suppose he  
22 did. In your training and experience, would he have  
23 also been making a tactical error?

24 MS. NICHOLS: Objection.

25 THE WITNESS: So I think, and this is the problem

Page 146

1 with hypotheticals, right, it's how far we gonna  
2 hypothetical. If there was the opportunity for him to  
3 secure a knife while we're dealing with somebody who is  
4 still combative, yes, that's a tactical error.  
5 Somebody who's compliant, somebody who has just been  
6 shot, somebody who is no longer a threat and has been  
7 incapacitated, no.

8 I think the priority changes from if we can  
9 get him into handcuffs quickly, then we can start life  
10 safety treatment. At that point securing the knife, if  
11 he's incapacitated and compliant, then that's just  
12 prolonging, even by seconds, the opportunity to start  
13 the life-saving measures. So, no, I don't think that  
14 would be a tactical error.

15 Q. (BY MR. LUTZ) Okay. So you went back to your  
16 patrol car?

17 A. Yes.

18 Q. And retrieved gloves; correct?

19 A. Yes.

20 Q. Like black latex gloves?

21 A. Yes.

22 Q. What did you do once you retrieved your  
23 gloves?

24 A. I re-approached where Patrick was so that I  
25 could also help with the aid that at this point now I

Page 147

1 believe Kris was assisting with Patrick and that's what  
2 I went to do as well.

3 Q. Okay. So both of them are there. Did you  
4 see the knife that you believe Mr. Harmon was holding?

5 A. Not at that point, no.

6 Q. Were you concerned about it being in the  
7 area?

8 A. No.

9 Q. And did you say at that point anything to  
10 either officer about a knife?

11 A. No.

12 Q. Okay. With respect -- once you arrived back  
13 at the scene and back at Mr. Harmon, what did you do  
14 next?

15 A. I want to say he might have still been face  
16 down. I immediately started thinking if there was  
17 somewhere we could do a tourniquet. You know, with any  
18 mass hemorrhaging, that's one of the first things you  
19 want to try to control is massive bleeding, so I  
20 started to kind of ask like, okay, have we figured that  
21 out. You know what I mean? And that was -- that was  
22 my number one concern at the time.

23 Q. Okay. Did you cut Mr. Harmon's clothing off?

24 A. I started to, yeah.

25 Q. And at some point in this interaction another

Page 148

1 officer arrives; is that right?

2 A. Yes. All sorts of people were showing up.

3 Q. Who was that? Who was the first one there?

4 A. I don't have -- I don't have any idea.

5 Q. About how much time passes before you are, I  
6 guess, relieved from the scene?

7 A. Relieved from the treatment I was giving  
8 Patrick?

9 Q. Yeah.

10 A. I mean, I didn't get all the way through the  
11 pants. I cut through the belt, top of the pants, as I  
12 was trying to get them off so that we could actually  
13 continue the evaluation. At some point I was pulled  
14 off to be isolated.

15 Q. Okay. And as you say to be isolated, is that  
16 part of protocol when there's an officer involved  
17 shooting?

18 A. Yes.

19 Q. Okay. To isolate the officer whose fired?

20 A. Yes.

21 Q. Okay. Was Mr. Harmon wearing gloves at any  
22 point during this incident?

23 A. I don't know.

24 Q. So after you saw the knife in Mr. Harmon's  
25 hand before you shot, you never saw it again?

<p style="text-align: right;">Page 149</p> <p>1       <b>A. No.</b></p> <p>2       Q. Okay. Let's go through this a little bit</p> <p>3 more. Okay. So you're pulled off to be isolated by</p> <p>4 another officer who arrives at the scene; right? Not</p> <p>5 Officer Smith or Officer Robinson; right?</p> <p>6       <b>A. Was I pulled off or were they pulled off?</b></p> <p>7       Q. You were pulled off; right?</p> <p>8       <b>A. Yes.</b></p> <p>9       Q. Okay. To be isolated?</p> <p>10       <b>A. Yes.</b></p> <p>11       Q. What did you do?</p> <p>12       <b>A. So I ended up walking back towards my car. I</b></p> <p>13 <b>had my knife which I put somewhere on the hood of my</b></p> <p>14 <b>car, took my gloves off. I think I just went and sat</b></p> <p>15 <b>on a rock, yeah.</b></p> <p>16       Q. Your body camera is still running all the way</p> <p>17 up until when you went and sat on the rock; right?</p> <p>18       <b>A. I believe.</b></p> <p>19       Q. Okay. And then what happened after you sat</p> <p>20 down?</p> <p>21       <b>A. Nothing. I was eventually taken to the</b></p> <p>22 <b>police department.</b></p> <p>23       Q. Do you remember who came up and talked to you</p> <p>24 while you were sitting on the rock?</p> <p>25       <b>A. I think at some point I think Scott and Kris</b></p>	<p style="text-align: right;">Page 151</p> <p>1       Q. Is that also part of protocol?</p> <p>2       <b>A. I believe so. I don't know if it's written</b></p> <p>3 <b>in protocol, but it should be if it's not.</b></p> <p>4       Q. Did you know Sergeant Sweeny well at that</p> <p>5 time?</p> <p>6       <b>A. We have been on SWAT together, so I knew him.</b></p> <p>7 <b>I can't say that I would know him well, no.</b></p> <p>8       Q. Okay. Was he also a friend?</p> <p>9       <b>A. Work friend. Like I said, I didn't know him.</b></p> <p>10       Q. What did you guys talk about on your way to</p> <p>11 the station?</p> <p>12       <b>A. I asked him if it would be appropriate to</b></p> <p>13 <b>call my wife.</b></p> <p>14       Q. How did he respond?</p> <p>15       <b>A. He said that we'll cross that bridge when we</b></p> <p>16 <b>get to it and he would try to let me know as soon as he</b></p> <p>17 <b>thought it would be an appropriate time.</b></p> <p>18       Q. So you weren't able to call her on the way</p> <p>19 back to the station?</p> <p>20       <b>A. I don't think he would have stopped me, but</b></p> <p>21 <b>he was making suggestions and I think I listened to</b></p> <p>22 <b>them.</b></p> <p>23       Q. Sure. What happened when you got back to the</p> <p>24 PSB?</p> <p>25       <b>A. I was put into an office. I was allowed to</b></p>
<p style="text-align: right;">Page 150</p> <p>1 did. I know there was somebody in a yellow shirt. No</p> <p>2 idea who it was. There may have even been another</p> <p>3 person there that I don't know who it was, but I think</p> <p>4 at some point, as officers responded to replace me,</p> <p>5 Kris and Scott, we all got isolated.</p> <p>6       Q. Okay. And did you have any conversations</p> <p>7 with any of these folks who approached you --</p> <p>8       <b>A. No.</b></p> <p>9       Q. -- while you were sitting?</p> <p>10       <b>A. They asked me if I was okay and I just said</b></p> <p>11 <b>yes.</b></p> <p>12       Q. But you didn't discuss the circumstance?</p> <p>13       <b>A. No.</b></p> <p>14       Q. And eventually were you -- somebody came and</p> <p>15 escorted you out of the scene?</p> <p>16       <b>A. Yes.</b></p> <p>17       Q. Who was that?</p> <p>18       <b>A. At the time he was a sergeant. He's a</b></p> <p>19 <b>lieutenant now. It was Alma Sweeney.</b></p> <p>20       Q. Okay. So you went with Sergeant Sweeney?</p> <p>21       <b>A. Yes.</b></p> <p>22       Q. Where did you go?</p> <p>23       <b>A. Straight back to the police department.</b></p> <p>24       Q. Okay. Sergeant Sweeney's driving?</p> <p>25       <b>A. Yes.</b></p>	<p style="text-align: right;">Page 152</p> <p>1 contact an attorney. I spoke to my attorney who asked</p> <p>2 me --</p> <p>3       MS. NICHOLS: Oh. I'm going to --</p> <p>4       <b>THE WITNESS: Sorry.</b></p> <p>5       MS. NICHOLS: -- direct you not to discuss</p> <p>6 anything --</p> <p>7       <b>THE WITNESS: Yeah.</b></p> <p>8       MR. LUTZ: -- we talked about on this.</p> <p>9       MS. NICHOLS: Sorry.</p> <p>10       Spoke to my attorney and I was put into a</p> <p>11 conference room, waited in the conference room until</p> <p>12 detectives and chiefs and deputy chiefs and other</p> <p>13 people showed up.</p> <p>14       Q. (BY MR. LUTZ) Okay. Which attorney did you</p> <p>15 contact?</p> <p>16       <b>A. Rebecca Skordas was the attorney who helped</b></p> <p>17 <b>me.</b></p> <p>18       Q. Okay. And at that time, was she employed</p> <p>19 like counsel for the police unit?</p> <p>20       <b>A. I think so. I think that's why she ended up</b></p> <p>21 <b>getting contacted is because I was a member of the</b></p> <p>22 <b>union and I was giving her information to contact, so.</b></p> <p>23       Q. It's not your personal attorney?</p> <p>24       <b>A. No.</b></p> <p>25       Q. Okay. How did you get her number?</p>

<p style="text-align: right;">Page 153</p> <p>1 A. I think it was furnished to me -- sorry.</p> <p>2 It's Lieutenant now, but Sergeant Sweeny at the time.</p> <p>3 Q. Did he hand you a card or something?</p> <p>4 A. Wrote it down on a piece of paper probably.</p> <p>5 I honestly don't know.</p> <p>6 Q. Did Sergeant Sweeny tell you to call an</p> <p>7 attorney?</p> <p>8 A. I think he asked me if I wanted to. He asked</p> <p>9 me if I wanted to and I was like yeah, I do.</p> <p>10 Q. Okay.</p> <p>11 A. So.</p> <p>12 Q. Okay. And then you were placed in a</p> <p>13 conference room, so you had this conversation with your</p> <p>14 attorney first?</p> <p>15 A. Yes.</p> <p>16 Q. And then these other folks come into the</p> <p>17 conference room to talk with you?</p> <p>18 A. Yes.</p> <p>19 Q. Who's all there?</p> <p>20 A. A lot of people came in and out. I can't</p> <p>21 even -- I believe deputy chiefs, I think -- honestly, I</p> <p>22 have no idea if Chief Brown even showed up. I want to</p> <p>23 say -- who was it that was the deputy chief that just</p> <p>24 left. Dowdt. I think Dowdt was there.</p> <p>25 Q. How do you spell that?</p>	<p style="text-align: right;">Page 155</p> <p>1 remember. There might have been one other question</p> <p>2 that was asked. If there was anything else outstanding</p> <p>3 or something.</p> <p>4 There's like some basic questions that our</p> <p>5 police department goes through and that's why I'm not</p> <p>6 sure if it was our guys was asking that or it was the</p> <p>7 UPD guys. They asked if I wanted to make a statement</p> <p>8 and I told them not until later. But I was asked how</p> <p>9 many times I fired and I think one other question I</p> <p>10 don't remember.</p> <p>11 Q. So you answered a couple basic questions, but</p> <p>12 declined to make a statement?</p> <p>13 A. Yes.</p> <p>14 Q. Why didn't you want to make a statement?</p> <p>15 A. I wanted to talk with my attorney first.</p> <p>16 Q. Let's just continue on this line. Did you</p> <p>17 watch your body cam footage before you made a</p> <p>18 statement?</p> <p>19 A. I believe I did, yeah.</p> <p>20 Q. With your attorney?</p> <p>21 A. Yes.</p> <p>22 Q. Is that standard protocol?</p> <p>23 A. Yes.</p> <p>24 Q. Really?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">Page 154</p> <p>1 A. D-o-w-d-t. I think that may not even be</p> <p>2 accurate, but he was there. I think there was a</p> <p>3 captain that was there. I think a guy who's now a</p> <p>4 deputy chief who at the time I think was just a captain</p> <p>5 was Van Dongen. I think he was there. A handful of</p> <p>6 other people in and out of the office, or the</p> <p>7 conference, to check see if I needed water, whatever.</p> <p>8 Q. Okay. Did anyone ask you to make a statement</p> <p>9 at that time?</p> <p>10 A. Not at that time, no.</p> <p>11 Q. When was the first time somebody asked you to</p> <p>12 make a statement?</p> <p>13 A. When the UPD detectives were questioning me.</p> <p>14 Q. When was that?</p> <p>15 A. So, I mean, I have no idea what the frame of</p> <p>16 time was from when I got to the PSB to them actually</p> <p>17 arriving. So whatever -- however that time frame was,</p> <p>18 they took me down to an interview room. I think that's</p> <p>19 where all the questions happened.</p> <p>20 Q. Is that like days later?</p> <p>21 A. No. This is the same night.</p> <p>22 Q. Did you answer questions?</p> <p>23 A. I think I -- they asked me I believe -- I</p> <p>24 don't even know if it was UPD that asked me, but I</p> <p>25 think I was asked how many times I fired. I can't</p>	<p style="text-align: right;">Page 156</p> <p>1 (Exhibit 13 marked.)</p> <p>2 Q. (BY MR. LUTZ) Okay. So I assume you've never</p> <p>3 seen this before. Or you may have as part of your job,</p> <p>4 but have you?</p> <p>5 A. No.</p> <p>6 Q. So this is a -- it reads to me as an</p> <p>7 investigator followup by Investigator Bench, Zach</p> <p>8 Bench, from August 22nd, 2017, so more than a week</p> <p>9 after the OIS with Mr. Harmon.</p> <p>10 A. Yes.</p> <p>11 Q. It reads "On Friday, August 18, 2017,</p> <p>12 Detective Brown and I responded to the Law Office of</p> <p>13 Rebecca Skordas who is representing Officer Fox. We</p> <p>14 showed Officer Fox and Rebecca a portion of his body</p> <p>15 cam footage from the incident. I did not leave a copy,</p> <p>16 nor did I show Officer Fox or Rebecca any other</p> <p>17 officers' body camera footage from that evening. On</p> <p>18 August 22nd, 2017, I met with Officer Fox and Rebecca</p> <p>19 at the sheriff's office building to obtain a statement</p> <p>20 from Officer Fox. The interview was audio recorded.</p> <p>21 Please refer to the transcript for further. Detective</p> <p>22 Brownlee and Investigator Kotrodimos were also</p> <p>23 present."</p> <p>24 So in that first paragraph, Investigator</p> <p>25 Bench describes that he -- that on August 18th he met</p>

<p style="text-align: right;">Page 157</p> <p>1 with you and your attorney and showed you your body cam 2 footage. Is that accurate? 3 <b>A. Yes.</b> 4 Q. And then it was not until four days later on 5 August 22nd, 2017, that you gave a statement in this 6 case? 7 <b>A. Yes.</b> 8 Q. So you had seen your body camera footage 9 before you made any statement in this case? 10 <b>A. Yes.</b> 11 Q. Okay. You can put that aside. 12 <b>A. (Complies.)</b> 13 Q. I'm going to fire up some media over here, so 14 can you just bear with me for a sec? 15 <b>A. Uh-huh.</b> 16 Q. Actually, let's just hang on a sec. 17 We have some, what's going to be some 18 multi-media exhibits. We can go off record. 19 (Discussion held off the record.) 20 MR. LUTZ: For the record, this is Bates-stamped 21 Audio File SLCC 001924. 22 Q. (BY MR. LUTZ) Okay. I'm just going to play 23 this for you and ask you to identify it, and we're 24 going to see the whole thing and then I'll have some 25 followup questions. Does that sound okay?</p>	<p style="text-align: right;">Page 159</p> <p>1 of those two detectives. Just to this day I couldn't 2 tell you who they are. 3 Q. Was Bench there? 4 <b>A. Again, there was two detectives from UPD. I</b> 5 <b>have no idea what their names were.</b> 6 Q. I mean, if we look at 13, Bench says he was 7 there. 8 <b>A. Yeah.</b> 9 MS. NICHOLS: Objection. 10 <b>THE WITNESS: Could have been. I honestly don't</b> 11 <b>know. I don't remember.</b> 12 Q. (BY MR. LUTZ) Okay. Were you looking at 13 notes when you gave that statement? 14 <b>A. No.</b> 15 Q. Have you heard that full recording before 16 today? 17 <b>A. I believe -- I believe the full recording,</b> 18 <b>yes.</b> 19 Q. How many times? 20 <b>A. Once.</b> 21 Q. When was that? 22 <b>A. Earlier this week.</b> 23 Q. And where did you give this statement? Was 24 that at the PSB? 25 <b>A. No. That was at the sheriff's office. I</b></p>
<p style="text-align: right;">Page 158</p> <p>1 <b>A. Yeah.</b> 2 (Audio file played.) 3 Q. (BY MR. LUTZ) Okay. Do you remember giving 4 that statement? 5 <b>A. Yes.</b> 6 Q. And is that an accurate, complete copy of the 7 statement that you gave on August 18th, 2017? 8 <b>A. I believe so, yes.</b> 9 Q. Okay. Who all's in the room with you? 10 <b>A. There was me, my attorney, two UPD</b> 11 <b>detectives. I think there was somebody else in the</b> 12 <b>room, but I'm not a hundred percent who was in the</b> 13 <b>room. It might be somebody from the district</b> 14 <b>attorney's office. I'm not sure.</b> 15 Q. Is the woman's voice we heard on there your 16 attorney? 17 <b>A. I don't remember.</b> 18 Q. Do you remember there being another woman 19 there? 20 <b>A. That's the one I'm not sure of. There might</b> 21 <b>have been another female in there, but I'm not a</b> 22 <b>hundred percent sure.</b> 23 Q. Okay. Do you know who was asking you 24 questions at the beginning of the tape? 25 <b>A. From the voices, I don't remember which one</b></p>	<p style="text-align: right;">Page 160</p> <p>1 <b>think their main building.</b> 2 Q. Okay. What did you do to prepare for this 3 interview? 4 <b>A. I know I spoke with my attorney.</b> 5 Q. Did you review any documents? 6 <b>A. Well, like I said --</b> 7 MS. NICHOLS: I'm going to just direct you not to 8 reveal any communications with your attorney, but you 9 can answer that question. 10 <b>THE WITNESS: Yeah, the only thing we did was</b> 11 <b>watch the video.</b> 12 Q. (BY MR. LUTZ) Your body cam footage? 13 <b>A. Uh-huh.</b> 14 Q. Okay. 15 <b>A. I don't even know if it was the full video.</b> 16 <b>I just know when the detectives came to the office, we</b> 17 <b>watched at least a portion of it. I don't remember</b> 18 <b>exactly how much of it.</b> 19 Q. Okay. In that statement you refer to 20 Mr. Harmon's body language as if he was performing, I 21 think you used the phrase a concealed draw? 22 <b>A. Yes.</b> 23 Q. Can you tell me what that is? 24 <b>A. So what I was attempting to describe was the</b> 25 <b>ability -- so when we teach concealed draws, typically</b></p>



<p style="text-align: right;">Page 161</p> <p>1 if you have like a weapon tucked into a waistband or                  2 somewhere else, right, you have your t-shirt over the                  3 side, then you take one hand, clear the t-shirt, and it                  4 gives you free access to whatever you're trying to go                  5 to, and that would be what would be a concealed draw                  6 (indicating).                  7 Q. Drawing a concealed weapon?                  8 A. Yeah.                  9 Q. Yeah, okay. Let's go briefly back to the                  10 13th, August 13, 2017, after you were taken back to the                  11 PSB. Did somebody -- I know you said you answered a                  12 few questions. Did somebody else though take                  13 possession of your gun?                  14 A. Yes.                  15 Q. And your body camera?                  16 A. Yes.                  17 Q. And then any other equipment?                  18 A. Yes.                  19 Q. Did they take your whole duty belt?                  20 A. No.                  21 Q. Did they take your taser?                  22 A. Yes.                  23 Q. Okay. Anything else you can remember?                  24 A. My two magazines were in my mag holsters.                  25 Q. Okay. And did somebody come and take</p>	<p style="text-align: right;">Page 163</p> <p>1 A. S-a-u-r-e-s I think.                  2 Q. And what's his position or what was it?                  3 A. I think he was just there to babysit me for                  4 lack of better words.                  5 Q. You don't know who the gentleman in the --                  6 A. I don't.                  7 Q. -- who's not in uniform is?                  8 A. I don't.                  9 Q. Did you have any discussions with those                  10 gentlemen while you were in the PSB?                  11 A. Nope.                  12 Q. So this is obviously before they took your                  13 equipment --                  14 A. Yeah.                  15 Q. -- for processing?                  16 A. Right.                  17 Q. Under your uniform here, are you wearing some                  18 sort of body armor?                  19 A. What do you mean? Like -- so I'm wearing a                  20 vest carrier, so the underpart is what's actually                  21 holding my body armor right there (indicating).                  22 Q. Which?                  23 A. So do you see this line that's right here?                  24 That's the bottom edge of my vest. My vest just looks                  25 like a shirt that is worn on that. It's an external</p>
<p style="text-align: right;">Page 162</p> <p>1 pictures of you?                  2 A. Yes.                  3 Q. Okay. Who was that? Do you recall who that                  4 was?                  5 A. I do not.                  6 (Exhibit 14 marked.)                  7 Q. (BY MR. LUTZ) Okay. So you've just been                  8 handed what's been marked as Exhibit 14. Do you                  9 recognize the person in this photograph?                  10 A. I do.                  11 Q. Who is it?                  12 A. That is me.                  13 Q. So this is -- is this a photograph of you at                  14 the PSB following your interaction with Mr. Harmon on                  15 the 13th of August 2017?                  16 A. Yes, it is.                  17 Q. Okay. Who are the two gentleman behind you                  18 through the window?                  19 A. I believe that's a reflection in a piece of                  20 glass that's there and the gentleman in the Salt Lake                  21 City uniform I believe is Pete Saures and I have no                  22 idea who the other guy is.                  23 Q. Pete Saures?                  24 A. Yeah.                  25 Q. S-o-w-e-r-s?</p>	<p style="text-align: right;">Page 164</p> <p>1 vest carrier.                  2 Q. Oh, I see. I gotcha.                  3 A. So that bit that you see down there is just a                  4 regular t-shirt that's actually under and you can see                  5 where my collar pops out through the neck hole.                  6 Q. Well designed. And that's your body camera                  7 up there on what is your left shoulder of the lens?                  8 A. Yeah, which obviously, now looking at it,                  9 there's actually a secondary clip, so I didn't have the                  10 horseshoe on which is one that I used to wear. There                  11 was one that -- I actually forgot that I used to have                  12 this vest. I have a completely different one now.                  13 But that actually just clips up to the lapel                  14 of the vest and then just can sit right there. So it's                  15 basically one inch over from the questions that you                  16 were asking me earlier just to clarify.                  17 Q. Okay. So it's lapel rather than collar here;                  18 is that right? Am I understanding that right?                  19 A. The anatomy from the shirt is from the                  20 shoulder to here (indicating). That is the lapel;                  21 right? Or what is that?                  22 Q. Well, on your uniform you have that strap --                  23 A. Yes.                  24 Q. -- on the shoulder?                  25 A. And then the lapel.</p>

<p style="text-align: right;">Page 165</p> <p>1 Q. That's the lapel; right?</p> <p>2 A. If we can agree that that's the lapel, that</p> <p>3 is where that is. It's a piece of plastic attached to</p> <p>4 my -- I have no idea what they call that piece --</p> <p>5 Q. That will do fine for --</p> <p>6 A. -- on the shirt. I don't know. Okay.</p> <p>7 Q. What is the vest made of?</p> <p>8 MS. NICHOLS: Objection.</p> <p>9 THE WITNESS: Which?</p> <p>10 Q. (BY MR. LUTZ) Do you know what the vest is</p> <p>11 made of?</p> <p>12 A. Which vest?</p> <p>13 Q. Your exterior vest on the outside of your</p> <p>14 shirt.</p> <p>15 A. I have no idea.</p> <p>16 Q. Is it body armor?</p> <p>17 MS. NICHOLS: Objection.</p> <p>18 THE WITNESS: Like -- okay. So that's a vest</p> <p>19 carrier, so there's a carrier that has the body armor</p> <p>20 in it.</p> <p>21 Q. (BY MR. LUTZ) Okay. Is there body armor in</p> <p>22 this carrier?</p> <p>23 A. Yes.</p> <p>24 Q. Okay. At the time?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 167</p> <p>1 the back and the back is going to almost mirror the</p> <p>2 front, just have a different collar area, and that</p> <p>3 rises maybe just a little bit more evenly across the</p> <p>4 back of your neck if that makes sense.</p> <p>5 Q. Okay. And is there protection for your</p> <p>6 backside too?</p> <p>7 A. Yes.</p> <p>8 Q. In, roughly, the same dimensions, just on</p> <p>9 your back instead of your front torso?</p> <p>10 A. Roughly, yes.</p> <p>11 Q. Okay. What about under your arms?</p> <p>12 A. Yes. That's where the panels should overlap.</p> <p>13 Q. Okay.</p> <p>14 (Exhibit 15 marked.)</p> <p>15 Q. (BY MR. LUTZ) Okay. Do you recognize the</p> <p>16 person in that image 15?</p> <p>17 A. Yes.</p> <p>18 Q. And who is that?</p> <p>19 A. Me again.</p> <p>20 Q. Just the back angle of you?</p> <p>21 A. Yes, sir.</p> <p>22 Q. So you can also see the vest carrier on your</p> <p>23 backside here?</p> <p>24 A. Yes.</p> <p>25 Q. Okay. That's all for that. I've give you</p>
<p style="text-align: right;">Page 166</p> <p>1 Q. What kind of body armor?</p> <p>2 MS. NICHOLS: Objection.</p> <p>3 THE WITNESS: I have no idea. Like brand name or</p> <p>4 what do you mean?</p> <p>5 Q. (BY MR. LUTZ) Let's break it down more. So</p> <p>6 for a layperson like me, I don't understand anything</p> <p>7 about this. Are you wearing a bulletproof vest?</p> <p>8 A. Yes.</p> <p>9 Q. Okay.</p> <p>10 A. Sorry.</p> <p>11 Q. Okay. And was that a standard part of your</p> <p>12 patrol uniform at that time?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. So you always went out with the</p> <p>15 bulletproof vest on?</p> <p>16 A. Yes.</p> <p>17 Q. What area does it protect on your anatomy?</p> <p>18 A. So you're going to have a portion that comes</p> <p>19 up and it basically -- it has like a little, you know,</p> <p>20 cutout collar so that it doesn't ride too high. So</p> <p>21 it's going to cover from what should just be almost</p> <p>22 your collarbones to either just above or below your</p> <p>23 bellybutton-ish.</p> <p>24 The panel should wrap around and a proper</p> <p>25 fitting vest should actually overlap with the panels in</p>	<p style="text-align: right;">Page 168</p> <p>1 one more.</p> <p>2 (Exhibit 16 marked.)</p> <p>3 Q. (BY MR. LUTZ) Do you recognize the person in</p> <p>4 this photo?</p> <p>5 A. Yes, I do.</p> <p>6 Q. Who's that?</p> <p>7 A. That is Officer Kris Smith.</p> <p>8 Q. And that is from the night of August 13th,</p> <p>9 2017?</p> <p>10 MS. NICHOLS: Objection.</p> <p>11 Q. (BY MR. LUTZ) At the PSB?</p> <p>12 A. I can assume so, yeah.</p> <p>13 Q. Okay. And, obviously, you didn't take this</p> <p>14 picture. Do you see Officer Smith also wearing the</p> <p>15 vest carrier?</p> <p>16 A. Yes, sir.</p> <p>17 Q. Okay. Okay. We can put that aside.</p> <p>18 (Exhibit 17 marked.)</p> <p>19 Q. (BY MR. LUTZ) Okay. Taking a look at Exhibit</p> <p>20 17 there, do you recognize what's in this picture?</p> <p>21 A. Yes, I do.</p> <p>22 Q. What is it?</p> <p>23 A. That is, I believe, an X26 taser.</p> <p>24 Q. Is that the same model that you were carrying</p> <p>25 in August of 2017 while you were out on patrol?</p>

Page 169

1 A. I believe it is.  
 2 Q. Okay. Do you believe this one is yours?  
 3 MS. NICHOLS: Objection.  
 4 THE WITNESS: Probably.  
 5 Q. (BY MR. LUTZ) The one that you were carrying  
 6 on August 17, 2017?  
 7 A. It's labeled as such, but there's no way --  
 8 honestly, without reading the serial number, you can't  
 9 tell a hundred percent if that's it or not.  
 10 Q. Sure. Can you tell whether it's been  
 11 deployed just from looking at it?  
 12 A. I think so. So with my limited knowledge, I  
 13 believe I could look at that and say that that has not  
 14 been deployed.  
 15 Q. How can you tell?  
 16 A. So typically -- so the green parts that you  
 17 can see should be the door panels that are on the front  
 18 end of the cartridge, those will actually blow off, and  
 19 so the fact that those -- I mean, not looking at the  
 20 front, that's one thing that could be wrong is they  
 21 could, I guess, break off right there, but then also  
 22 just where the circle is there is where the wire is  
 23 coiled around there.  
 24 So, again, I mean, it's not necessarily --  
 25 I'm not good enough to say 100 percent, but I would

Page 170

1 look at that and say well, if the coils still look like  
 2 they're wrapped up and that panel hasn't blown off,  
 3 then that's probably not been used.  
 4 Q. Okay. Thank you. You can put that aside.  
 5 A. (Complies.)  
 6 Q. Oh. One more. This is exhibit -- do you  
 7 recognize the person in Exhibit 6?  
 8 A. I do.  
 9 Q. Who's that?  
 10 A. That is Officer Scott Robinson.  
 11 Q. And is he also wearing the plate carrier that  
 12 we talked about earlier?  
 13 MS. NICHOLS: Objection.  
 14 Q. (BY MR. LUTZ) Can you tell?  
 15 A. It does not look like he is, but I can't  
 16 tell. He might have his body armor -- so some of them  
 17 wear it under their shirts still.  
 18 Q. Okay. That's good.  
 19 You mentioned in the interview that we  
 20 listened to earlier that one of -- and I'm  
 21 paraphrasing, so obviously if I say something  
 22 incorrectly, let me know. But you basically indicated  
 23 that one of your main concerns about the dangers that  
 24 was posed by Mr. Harmon was the distance between you at  
 25 a certain point in time. Is that right?

Page 171

1 A. Yes.  
 2 Q. So at the time that you fired, what do you  
 3 estimate that distance to be?  
 4 A. Six feet, seven at most.  
 5 Q. You also mentioned in that statement that you  
 6 like to be in control of, I'm going to paraphrase  
 7 badly, but that you like to be in control of the  
 8 choices that you're going to make and something about  
 9 that situation limited your ability to decide what to  
 10 do; right?  
 11 MS. NICHOLS: Objection.  
 12 THE WITNESS: Yeah, I mean, I understand the part  
 13 that you're driving at, yes.  
 14 Q. (BY MR. LUTZ) Is what you're referring to  
 15 there that the situation involved such that the only  
 16 thing that you could do at a certain moment was fire  
 17 your gun?  
 18 MS. NICHOLS: Objection.  
 19 THE WITNESS: Sorry. Say the question one more  
 20 time.  
 21 Q. (BY MR. LUTZ) I just need your testimony just  
 22 to clarify it. Let's just go back and break it down  
 23 more fundamentally.  
 24 How far away were you from Mr. Harmon when  
 25 you drew your gun?

Page 172

1 A. So when I originally drew my gun, probably  
 2 only two to three feet.  
 3 Q. What do you mean originally?  
 4 A. Sorry. That's probably bad words. When I  
 5 drew my gun, I was probably two to three feet.  
 6 Q. At that distance once your gun is drawn, if  
 7 he's going to come back at you, is your only option to  
 8 use your firearm?  
 9 MS. NICHOLS: Objection.  
 10 THE WITNESS: I think I could probably let him  
 11 stab me first.  
 12 Q. (BY MR. LUTZ) So you would say that's the  
 13 only option?  
 14 A. Probably the only option to defend myself to  
 15 stop him from stabbing me, yes.  
 16 Q. Is there ever a situation where -- is there a  
 17 distance between you and a potential suspect that is  
 18 too close for it to be appropriate for you to draw your  
 19 firearm?  
 20 MS. NICHOLS: Objection.  
 21 THE WITNESS: So like if he was so close that I  
 22 couldn't? No, there's never a moment that would be  
 23 inappropriate.  
 24 MR. LUTZ: Okay.  
 25 THE WITNESS: Like, again, it would be the

<p style="text-align: right;">Page 173</p> <p>1 totality of the situation; right? Hypotheticals is a</p> <p>2 dangerous world because you can give reasons why it</p> <p>3 would be or reasons why it would not be appropriate,</p> <p>4 but in my opinion, if you were to just generalize it,</p> <p>5 no, there's never a time it's too close.</p> <p>6 Q. (BY MR. LUTZ) You can fire your weapon from</p> <p>7 any distance, basically?</p> <p>8 A. Yeah. Potentially, yes.</p> <p>9 Q. Or potentially from a very close range?</p> <p>10 A. Yes.</p> <p>11 Q. Earlier we talked about how at the moment</p> <p>12 that you told Mr. Harmon I'll fucking shoot you, I</p> <p>13 believe you said that there was probably nothing that</p> <p>14 he could have done to avoid being shot at that point.</p> <p>15 MS. NICHOLS: Objection.</p> <p>16 Q. (BY MR. LUTZ) Is that right?</p> <p>17 A. Yeah, I mean, that's probably accurate.</p> <p>18 Q. Does that have something to do with the fact</p> <p>19 that you already have your gun in your hand and the</p> <p>20 quickest way you can react to anything he does is fire</p> <p>21 the gun?</p> <p>22 MS. NICHOLS: Objection.</p> <p>23 THE WITNESS: No.</p> <p>24 Q. (BY MR. LUTZ) Can you say why?</p> <p>25 A. If he had continued to run away, I could have</p>	<p style="text-align: right;">Page 175</p> <p>1 A. Yes, but I am not sure that I've seen the</p> <p>2 totality of either of their videos.</p> <p>3 Q. Okay.</p> <p>4 A. As a whole.</p> <p>5 Q. Okay. At what point were you made aware that</p> <p>6 your shooting with Mr. Harmon was being investigated by</p> <p>7 the Internal Affairs Unit?</p> <p>8 MS. NICHOLS: Objection.</p> <p>9 THE WITNESS: I don't know if I was ever notified</p> <p>10 that it was being investigated. I think it was just</p> <p>11 assumed they would do it on every case I think.</p> <p>12 Q. (BY MR. LUTZ) Okay. So from your</p> <p>13 understanding, what was happening in terms of the</p> <p>14 internal investigation was just standard protocol for</p> <p>15 any officer involved shooting?</p> <p>16 A. Yeah.</p> <p>17 Q. Okay. At what point were you made aware of</p> <p>18 the results of the internal investigation involving you</p> <p>19 and the shooting with Mr. Harmon?</p> <p>20 A. I don't even know. Like, I don't know. I</p> <p>21 don't remember.</p> <p>22 Q. Did you ever read the report that the</p> <p>23 Internal Affairs Unit issued?</p> <p>24 MS. NICHOLS: Objection.</p> <p>25 THE WITNESS: I don't know that it -- no. No. I</p>
<p style="text-align: right;">Page 174</p> <p>1 done something different.</p> <p>2 Q. I see. That's a little bit different than</p> <p>3 what you said before about that particular moment.</p> <p>4 MS. NICHOLS: Is there a question?</p> <p>5 THE WITNESS: What do you mean?</p> <p>6 Q. (BY MR. LUTZ) Well, I'll reask the question</p> <p>7 from before. At the moment that you told Mr. Harmon</p> <p>8 I'll fucking shoot you, was there something that -- is</p> <p>9 there a way that he could have responded that would</p> <p>10 have resulted in you not shooting him?</p> <p>11 MS. NICHOLS: Objection, asked and answered.</p> <p>12 THE WITNESS: In that moment, no.</p> <p>13 MR. LUTZ: Okay.</p> <p>14 MS. NICHOLS: Mr. Lutz, we've been going about an</p> <p>15 hour 50. Could we take a break soon?</p> <p>16 MR. LUTZ: Yeah.</p> <p>17 MS. NICHOLS: Would that be all right? Okay.</p> <p>18 (Recess taken from 2:25 p.m. to 2:40 p.m.)</p> <p>19 Q. (BY MR. LUTZ) Okay. Officer Fox, so at this</p> <p>20 point in time you've seen the body camera footage of</p> <p>21 Officer Smith; correct?</p> <p>22 A. Like as of right now?</p> <p>23 Q. Yeah.</p> <p>24 A. Yes.</p> <p>25 Q. And you've also seen Officer Robinson?</p>	<p style="text-align: right;">Page 176</p> <p>1 don't remember doing so if I did, but I don't believe I</p> <p>2 did.</p> <p>3 Q. (BY MR. LUTZ) While the investigation was</p> <p>4 pending, the internal investigation, were you worried</p> <p>5 about it?</p> <p>6 A. About what?</p> <p>7 Q. About what the potential result could be.</p> <p>8 A. Yes.</p> <p>9 Q. Who were you worried about?</p> <p>10 A. Everything.</p> <p>11 Q. Potential discipline?</p> <p>12 A. Sure.</p> <p>13 Q. Your career?</p> <p>14 A. Yes.</p> <p>15 Q. Anything else?</p> <p>16 A. Yeah, I mean, everything. There's no way for</p> <p>17 me to explain how worried I was about everything that</p> <p>18 could potentially come with that.</p> <p>19 Q. But you don't remember the result coming</p> <p>20 down?</p> <p>21 A. I mean, no. No.</p> <p>22 Q. I just ask because it must have been a</p> <p>23 relief.</p> <p>24 A. So I remember where I was when I found out</p> <p>25 that the DA had cleared it.</p>

<p style="text-align: right;">Page 177</p> <p>1 Q. Okay.</p> <p>2 A. As far as IA, I don't remember.</p> <p>3 Q. Okay. Because the DA's decision came down</p> <p>4 first?</p> <p>5 A. I believe so.</p> <p>6 Q. That makes sense. So were you also -- well,</p> <p>7 when were you made aware that the district attorney was</p> <p>8 looking at the incident?</p> <p>9 A. I don't think I was made aware that he was.</p> <p>10 I think, again, just standard procedure.</p> <p>11 Q. For all officer involved shootings?</p> <p>12 A. I believe so.</p> <p>13 Q. Did you know that Officer Robinson was</p> <p>14 involved in some officer involved shootings?</p> <p>15 MS. NICHOLS: Objection.</p> <p>16 THE WITNESS: I know of one other that he was</p> <p>17 involved in.</p> <p>18 Q. (BY MR. LUTZ) Do you know if the DA</p> <p>19 investigated Officer Robinson?</p> <p>20 A. I can't think of a single one he hasn't</p> <p>21 investigated, so.</p> <p>22 Q. Okay. So your understanding is that's</p> <p>23 procedure?</p> <p>24 A. I thought so.</p> <p>25 Q. In every instance?</p>	<p style="text-align: right;">Page 179</p> <p>1 time, Captain Purvis.</p> <p>2 MR. LUTZ: Okay.</p> <p>3 THE WITNESS: I don't think that concluded</p> <p>4 anything with regards to anything else. I don't know.</p> <p>5 Q. (BY MR. LUTZ) Can we briefly flip to the next</p> <p>6 page --</p> <p>7 A. Sure.</p> <p>8 Q. -- SLCC 366. Have you ever seen this before?</p> <p>9 A. I have not.</p> <p>10 Q. Okay. Can you flip to the next page.</p> <p>11 A. (Complies.)</p> <p>12 Q. Does any of that look familiar?</p> <p>13 A. Nope.</p> <p>14 Q. Okay. You can put it aside.</p> <p>15 A. (Complies.)</p> <p>16 Q. Did you ever request from anyone in the</p> <p>17 department to review any of the IA investigation</p> <p>18 materials?</p> <p>19 A. No.</p> <p>20 Q. Were you ever curious about what was in them?</p> <p>21 A. No.</p> <p>22 Q. Did you ever read any of the investigation</p> <p>23 materials from the district attorney's office?</p> <p>24 MS. NICHOLS: Objection.</p> <p>25 THE WITNESS: No.</p>
<p style="text-align: right;">Page 178</p> <p>1 A. I thought so.</p> <p>2 (Exhibit 18 marked.)</p> <p>3 Q. (BY MR. LUTZ) Okay. Have you -- you've just</p> <p>4 been handed what's been marked as Exhibit 18. Have you</p> <p>5 ever seen this before?</p> <p>6 A. Not that I can recall.</p> <p>7 Q. What does it appear to be?</p> <p>8 MS. NICHOLS: Objection.</p> <p>9 THE WITNESS: It says it's a Complaint Disposition</p> <p>10 Form.</p> <p>11 Q. (BY MR. LUTZ) And do you see the allegation</p> <p>12 reads "Officer use of deadly force." Finding reads</p> <p>13 "In-Policy" and follows "The actions of the subject</p> <p>14 officer were reasonable, appropriate, did not violate</p> <p>15 police department policy."</p> <p>16 See that?</p> <p>17 A. Yes.</p> <p>18 Q. Knowing that, is this a document -- is this</p> <p>19 document the fact that the IA complaint was concluded</p> <p>20 and they determined that you did not violate policy in</p> <p>21 your shooting of Patrick Harmon?</p> <p>22 MS. NICHOLS: Objection.</p> <p>23 THE WITNESS: I don't know that this concludes any</p> <p>24 of it. I mean, I just see that it says what the</p> <p>25 finding is and then it's signed by one of the, at the</p>	<p style="text-align: right;">Page 180</p> <p>1 Q. (BY MR. LUTZ) Did you ever read the district</p> <p>2 attorney's determination letter exonerating you?</p> <p>3 A. Yes. Parts of it. Not front to back, but</p> <p>4 parts of it.</p> <p>5 (Exhibit 19 marked.)</p> <p>6 Q. (BY MR. LUTZ) Okay. You've been handed</p> <p>7 what's been marked Exhibit 19. Take a look at that,</p> <p>8 please.</p> <p>9 A. (Complies.)</p> <p>10 Q. Do you recognize this document?</p> <p>11 A. Sort of. I mean, it just looks like a</p> <p>12 standard memo thing that they would issue out.</p> <p>13 Q. Who is it addressed to?</p> <p>14 A. Me.</p> <p>15 Q. But you don't remember ever reading this?</p> <p>16 A. (Peruses document.)</p> <p>17 I don't remember ever reading it, no.</p> <p>18 Q. Okay. You can put that aside.</p> <p>19 A. (Complies.)</p> <p>20 (Exhibit 20 marked.)</p> <p>21 Q. (BY MR. LUTZ) Okay. So you've just been</p> <p>22 handed what's marked as Exhibit 20. Just take a minute</p> <p>23 to look at that.</p> <p>24 A. (Complies.)</p> <p>25 Q. Do you recognize this document?</p>



<p style="text-align: right;">Page 181</p> <p>1       <b>A.   No.</b></p> <p>2       Q.   Do you believe that you've ever come across</p> <p>3   this in your training or anything like that?</p> <p>4       <b>A.   No.</b></p> <p>5       Q.   Okay. You can put it aside.</p> <p>6       <b>A.   (Complies.)</b></p> <p>7       Q.   Going back to your testimony from a few</p> <p>8   minutes ago regarding the knife that you believe was in</p> <p>9   Mr. Harmon's possession, I believe you said that after</p> <p>10   you had shot Mr. Harmon, you didn't see the knife again</p> <p>11   on the scene. Is that right?</p> <p>12       <b>A.   Yes.</b></p> <p>13       Q.   Okay. Do you believe you've seen photos of</p> <p>14   it later after the shooting?</p> <p>15       <b>A.   I mean, I know that I have. Yeah.</b></p> <p>16       Q.   Do you recall in what context you've seen</p> <p>17   those?</p> <p>18       <b>A.   I don't.</b></p> <p>19       Q.   Did an investigator ask you about, like show</p> <p>20   you a photo of it and ask you about it?</p> <p>21       <b>A.   No. I don't remember. I don't think so.</b></p> <p>22       Q.   Could it have been in the DA's clearance</p> <p>23   letter?</p> <p>24       <b>A.   It could have. I don't remember.</b></p> <p>25       Q.   You never had a copy or like a photo of the</p>	<p style="text-align: right;">Page 183</p> <p>1       <b>A.   Is this Kris's?</b></p> <p>2                (Video played.)</p> <p>3       MR. LUTZ: Just pause that.</p> <p>4       <b>THE WITNESS: I'm going to move this. I can't see</b></p> <p>5   <b>the timestamp.</b></p> <p>6       MS. NICHOLS: That's okay.</p> <p>7       MR. LUTZ: So pause this at 54 seconds. We will</p> <p>8   enter this as Exhibit, so pause it 54 seconds,</p> <p>9   Exhibit 21.</p> <p>10               (Exhibit 21 marked.)</p> <p>11       Q.   (BY MR. LUTZ) Do you recognize this video</p> <p>12   now?</p> <p>13       <b>A.   Yes.</b></p> <p>14       Q.   What is it?</p> <p>15       <b>A.   I believe it's my body cam footage.</b></p> <p>16       Q.   And so far does this appear to be a fair and</p> <p>17   accurate representation of your body cam footage from</p> <p>18   October 2017?</p> <p>19       <b>A.   I believe so.</b></p> <p>20       Q.   Okay. I'm going to play this through once</p> <p>21   and then go back.</p> <p>22       <b>A.   (Nods head.)</b></p> <p>23                (Video played.)</p> <p>24       Q.   (BY MR. LUTZ) Okay. Have you seen all of</p> <p>25   that exhibit before?</p>
<p style="text-align: right;">Page 182</p> <p>1   knife in your own possession, did you?</p> <p>2       <b>A.   No.</b></p> <p>3       Q.   And you don't recall whether or not you</p> <p>4   reviewed the DA's determination letter?</p> <p>5       MS. NICHOLS: Objection.</p> <p>6       <b>THE WITNESS: The determination letter?</b></p> <p>7       MR. LUTZ: (Nods head.)</p> <p>8       <b>THE WITNESS: So that's the one I think I had</b></p> <p>9   <b>reviewed most of it.</b></p> <p>10       MR. LUTZ: Okay.</p> <p>11       MR. RILEY: So I don't show that the video's were</p> <p>12   Bates-stamped, the ones that you guys attached to your</p> <p>13   Motion to Dismiss.</p> <p>14       MS. NICHOLS: I think the Bates-stamped videos</p> <p>15   should be in our most recent production was my</p> <p>16   understanding.</p> <p>17       MR. RILEY: They are.</p> <p>18       MR. LUTZ: We also gave you Bates-stamped</p> <p>19   versions.</p> <p>20                (Pause in the proceedings.)</p> <p>21       Q.   (BY MR. LUTZ) Okay. For the record, the</p> <p>22   video that I just pulled up is Bates-stamped HARMON24.</p> <p>23   Just from the screen shot that's pulled up right there</p> <p>24   at one second, do you recognize this video? I can play</p> <p>25   it more. I just --</p>	<p style="text-align: right;">Page 184</p> <p>1       <b>A.   Yes.</b></p> <p>2       Q.   Have you seen any longer version of it?</p> <p>3       <b>A.   I think that's it.</b></p> <p>4       Q.   Okay. So we're at 9 seconds here. There's</p> <p>5   no audio. Is that because there's a delay in when you</p> <p>6   hit record and when it starts recording audio on your</p> <p>7   body cam?</p> <p>8       <b>A.   I believe so.</b></p> <p>9                (Video played.)</p> <p>10       MR. LUTZ: Pause it for a second here.</p> <p>11       Q.   (BY MR. LUTZ) This is Mr. Harmon directly in</p> <p>12   front of you; correct?</p> <p>13       <b>A.   Yes.</b></p> <p>14                (Video played.)</p> <p>15       MR. LUTZ: Pause it there, 32 seconds.</p> <p>16       Q.   (BY MR. LUTZ) The audio seems that it came on</p> <p>17   at 30 seconds. Would that be the normal amount of time</p> <p>18   for that audio to start?</p> <p>19       <b>A.   Yes.</b></p> <p>20                (Video played.)</p> <p>21       Q.   (BY MR. LUTZ) We paused it at 36 seconds. Do</p> <p>22   you recognize who just said, "Patrick, you already know</p> <p>23   about your warrant; right?"</p> <p>24       <b>A.   Yes.</b></p> <p>25       Q.   Who was that?</p>

<p style="text-align: right;">Page 185</p> <p>1       <b>A.   Officer Scott Robinson.</b>                  2               (Video played.)                  3       MR. LUTZ: Pause it at 45 seconds.                  4       Q.   (BY MR. LUTZ) On the right side of the frame,                  5 who is that?                  6       <b>A.   That's Officer Robinson.</b>                  7               (Video played.)                  8       MR. LUTZ: Pause it at 48 seconds.                  9       Q.   (BY MR. LUTZ) Looks like there's an arm                  10 reaching across touching Mr. Harmon's arm. Whose arm                  11 is that?                  12       <b>A.   I believe it to be Officer Smith's.</b>                  13       Q.   Okay.                  14               (Video played.)                  15       MR. LUTZ: Pause at 103.                  16       Q.   (BY MR. LUTZ) At this point do you believe                  17 you had drawn your gun?                  18       MS. NICHOLS: Objection.                  19       <b>THE WITNESS: Is there any way I could watch it</b>                  20 <b>again up to this point?</b>                  21       MR. LUTZ: Sure. Actually, why don't I go back                  22 to -- tell me -- I'll let it play forward. Tell me, if                  23 you can, at what point you believe you drew your gun                  24 while we're watching.                  25       MS. NICHOLS: Objection.</p>	<p style="text-align: right;">Page 187</p> <p>1       Q.   (BY MR. LUTZ) Okay. I'm pausing it at 244.                  2 At this point have you seen a knife anywhere in this                  3 footage? Let me rephrase that.                  4               Paused at 244, since you opened fired on                  5 Mr. Harmon, do you see a knife anywhere in the video?                  6       <b>A.   In this frame right here?</b>                  7       Q.   In any of the frames that we watched so far.                  8       <b>A.   I believe, if you go back as Officer</b>                  9 <b>Robinson's approaching, there's something in the grass</b>                  10 <b>that is, I believe, a knife.</b>                  11       Q.   Okay. We can go back.                  12               (Video played.)                  13       Q.   (BY MR. LUTZ) Pausing right there at 3                  14 minutes 6 seconds. Was that just you using your knife                  15 to cut some of Mr. Harmon's clothing?                  16       <b>A.   Yes.</b>                  17               (Video played.)                  18       Q.   (BY MR. LUTZ) Pausing at 314. There's now                  19 another person here. Do you know who this is on the                  20 right side of the screen?                  21       <b>A.   I think that that's Sergeant Sweeny, but I'm</b>                  22 <b>not a hundred, like, not sure.</b>                  23       Q.   Okay. And we can't really see from that                  24 angle?                  25       <b>A.   From his voice it sounds like him, and I know</b></p>
<p style="text-align: right;">Page 186</p> <p>1               (Video played.)                  2       <b>THE WITNESS: I wouldn't be able to tell you when</b>                  3 <b>I drew my gun.</b>                  4       MR. LUTZ: Okay. Let's play through one more                  5 time. Just a couple more questions. Pause along the                  6 way and we'll put this one away.                  7               (Video played.)                  8       Q.   (BY MR. LUTZ) So pausing at 116. On the                  9 right of the frame who is that on the right?                  10       <b>A.   Officer Robinson.</b>                  11       Q.   Okay. And at 116 how far away is he from                  12 Mr. Harmon?                  13       <b>A.   Reach out touch him. I have no idea.</b>                  14               (Video played.)                  15       Q.   (BY MR. LUTZ) Pausing at 224. Who's that on                  16 the far right?                  17       <b>A.   On the what?</b>                  18       Q.   On the far right of the frame.                  19       <b>A.   It should be Officer Robinson.</b>                  20       Q.   And the left of Officer Robinson?                  21       <b>A.   The officer?</b>                  22       Q.   Yeah.                  23       <b>A.   Is Officer Smith.</b>                  24       Q.   Okay.                  25               (Video played.)</p>	<p style="text-align: right;">Page 188</p> <p>1       <b>that he was there super early. So if the person that's</b>                  2 <b>on screen is the one that's talking, then that's</b>                  3 <b>Sergeant Sweeny, or now Lieutenant, but I feel weird</b>                  4 <b>calling him by the wrong rank, but yeah.</b>                  5       Q.   Okay.                  6               Play again at 314.                  7               (Video played.)                  8       Q.   (BY MR. LUTZ) We just flashed over another                  9 person, so I'm going back. It's between 315, 314, and                  10 315. There's another person now. Do you know who that                  11 is?                  12       <b>A.   I don't.</b>                  13               (Video played.)                  14       Q.   (BY MR. LUTZ) Paused at 3 minutes 34 seconds.                  15 Do you know who is in this frame that just asked if                  16 you're good?                  17       <b>A.   I think that's Officer Smith.</b>                  18       Q.   Okay.                  19               (Video played.)                  20       Q.   (BY MR. LUTZ) Paused at 4 minutes 21 seconds.                  21 Do you know who is standing right here to the right of                  22 the frame?                  23       <b>A.   No. If I saw their face, I probably would</b>                  24 <b>recognize it, but no.</b>                  25               (Video played.)</p>

<p style="text-align: right;">Page 189</p> <p>1 Q. (BY MR. LUTZ) Paused at 428. Is that you who</p> <p>2 said, "Can I call Brittany?"</p> <p>3 <b>A. Yes.</b></p> <p>4 Q. That's your wife?</p> <p>5 <b>A. Yes.</b></p> <p>6 (Video played.)</p> <p>7 Q. (BY MR. LUTZ) Paused at 4 minutes 38 seconds.</p> <p>8 Do you know who's standing in front of you right here</p> <p>9 or remember who's standing in front of you right here?</p> <p>10 <b>A. I mean, just by tracking it through the</b></p> <p>11 <b>individual, I believe the person on the left is still</b></p> <p>12 <b>Officer Smith. I don't know who the person on the</b></p> <p>13 <b>right is.</b></p> <p>14 Q. Okay.</p> <p>15 (Video played.)</p> <p>16 Q. (BY MR. LUTZ) Okay. Paused it at 5 minutes</p> <p>17 18 seconds. We just hear "Where the fuck's the</p> <p>18 ambulance at." Was that you or who was that?</p> <p>19 <b>A. I don't think that was me. I don't know who</b></p> <p>20 <b>that was, but I don't think it was me.</b></p> <p>21 Q. Okay.</p> <p>22 (Video played.)</p> <p>23 Q. (BY MR. LUTZ) Okay. Paused it at 6 minutes</p> <p>24 even. Do you know who that is who just walked up right</p> <p>25 in the center?</p>	<p style="text-align: right;">Page 191</p> <p>1 <b>whoever it is that he believes he has stopped.</b></p> <p>2 (Video played.)</p> <p>3 Q. (BY MR. LUTZ) Just pausing here at 7 minutes</p> <p>4 1 second. Is that you who just walked up in the middle</p> <p>5 of the frame?</p> <p>6 <b>A. Yes.</b></p> <p>7 (Video played.)</p> <p>8 Q. (BY MR. LUTZ) Can you explain that, "We're</p> <p>9 going to go?"</p> <p>10 <b>A. I'm sorry?</b></p> <p>11 Q. I think it was we're going to go 89 Fox 2?</p> <p>12 <b>A. We're going to go 82 which is 1082. It's</b></p> <p>13 <b>part of the code for taking somebody into custody. Fox</b></p> <p>14 <b>2 is for a felony 2 warrant.</b></p> <p>15 Q. Okay.</p> <p>16 <b>A. And, yeah, I don't know if there's anything</b></p> <p>17 <b>else he said.</b></p> <p>18 Q. Okay. Thank you.</p> <p>19 (Video played.)</p> <p>20 Q. (BY MR. LUTZ) Okay. And I paused at 7</p> <p>21 minutes 46 seconds. We're looking at Officer Robinson</p> <p>22 directly in the center of the frame; right?</p> <p>23 <b>A. Yes.</b></p> <p>24 Q. To Patrick's right.</p> <p>25 (Video played.)</p>
<p style="text-align: right;">Page 190</p> <p>1 <b>A. Officer Robinson.</b></p> <p>2 (Video played.)</p> <p>3 Q. (BY MR. LUTZ) Paused at 6 minutes 14. Was</p> <p>4 that you just saying, "I'll grab my knife?"</p> <p>5 <b>A. Yes.</b></p> <p>6 Q. And what was the other knife that you guys</p> <p>7 were talking about?</p> <p>8 <b>A. That was the one that Patrick had.</b></p> <p>9 (Video played.)</p> <p>10 MR. LUTZ: Okay.</p> <p>11 I'm going to pull up HARMON28 which we'll</p> <p>12 mark as Exhibit 22.</p> <p>13 (Exhibit 22 marked.)</p> <p>14 (Video played.)</p> <p>15 Q. (BY MR. LUTZ) I've shown you a minute of</p> <p>16 Exhibit 22. Do you recognize this video?</p> <p>17 <b>A. Probably this is Officer Smith's.</b></p> <p>18 Q. Okay. I'm going to let it play again here at</p> <p>19 one minute.</p> <p>20 (Video played.)</p> <p>21 Q. (BY MR. LUTZ) I'm going to pause here at 147.</p> <p>22 The computer screen in the middle of the frame, do you</p> <p>23 know what Officer Smith is doing on the computer during</p> <p>24 this sequence?</p> <p>25 <b>A. I'm assuming that he's attempting to look up</b></p>	<p style="text-align: right;">Page 192</p> <p>1 MR. LUTZ: Okay. Pause there and go back. Pause</p> <p>2 at 832. Play at 754.</p> <p>3 (Video played.)</p> <p>4 Q. (BY MR. LUTZ) It's difficult to tell, but</p> <p>5 we're paused at 815. Was that you coming from the</p> <p>6 right side of the frame?</p> <p>7 <b>A. Yeah, I believe so.</b></p> <p>8 (Video played.)</p> <p>9 Q. (BY MR. LUTZ) Paused at 816. On the left</p> <p>10 side of the frame there we're looking at Officer</p> <p>11 Robinson and Patrick's back?</p> <p>12 <b>A. Yes.</b></p> <p>13 (Video played.)</p> <p>14 Q. (BY MR. LUTZ) And just a second there, 816,</p> <p>15 that's Officer Robinson kind of in the distance over</p> <p>16 there; right?</p> <p>17 <b>A. Yes.</b></p> <p>18 Q. Patrick running to the right there?</p> <p>19 <b>A. Yes.</b></p> <p>20 (Video played.)</p> <p>21 MR. LUTZ: Okay. Paused right there at 849.</p> <p>22 Q. (BY MR. LUTZ) We're looking at the</p> <p>23 outstretched arm on the left side of the frame which</p> <p>24 should be Officer Smith's arm; right?</p> <p>25 <b>A. Yes.</b></p>

<p style="text-align: right;">Page 193</p> <p>1 Q. And that's his taser --</p> <p>2 <b>A. Yes.</b></p> <p>3 Q. -- in his hand?</p> <p>4 <b>A. Yes.</b></p> <p>5 Q. And you can tell it's been deployed because</p> <p>6 you can see the coils out; correct (indicating)?</p> <p>7 <b>A. I believe so.</b></p> <p>8 Q. I'll play a second of the video so you can</p> <p>9 see the motion.</p> <p>10 (Video played.)</p> <p>11 Q. (BY MR. LUTZ) That's a yes?</p> <p>12 <b>A. Yes.</b></p> <p>13 (Video played.)</p> <p>14 Q. (BY MR. LUTZ) Paused at 10 minutes 6 seconds.</p> <p>15 At this point you've returned with your gloves on?</p> <p>16 <b>A. Yes.</b></p> <p>17 Q. Okay.</p> <p>18 (Video played.)</p> <p>19 Q. (BY MR. LUTZ) Paused at 10 minutes 19</p> <p>20 seconds. That's you on the right side of the frame</p> <p>21 cutting Mr. Harmon's clothes?</p> <p>22 <b>A. Yes.</b></p> <p>23 (Video played.)</p> <p>24 Q. (BY MR. LUTZ) Paused at 10 minutes 36</p> <p>25 seconds. That's you walking in front of Officer</p>	<p style="text-align: right;">Page 195</p> <p>1 <b>A. I have not.</b></p> <p>2 Q. Okay. Okay. We're going to mark HARMON36 as</p> <p>3 Exhibit 23.</p> <p>4 (Exhibit 23 marked.)</p> <p>5 (Video played.)</p> <p>6 Q. (BY MR. LUTZ) Okay. Having played 36 seconds</p> <p>7 of this exhibit, do you recognize this video?</p> <p>8 <b>A. It should be Officer Robinson's video.</b></p> <p>9 Q. Okay. You've seen it before?</p> <p>10 <b>A. Yes.</b></p> <p>11 Q. Okay.</p> <p>12 (Video played.)</p> <p>13 Q. (BY MR. LUTZ) Okay. Pausing that here at</p> <p>14 152, having heard the audio up to this point, does it</p> <p>15 sound distorted to you?</p> <p>16 <b>A. Yeah.</b></p> <p>17 Q. Has that ever happened in your experience</p> <p>18 with your body cam audio?</p> <p>19 <b>A. Not that I'm aware of, but I hardly ever</b></p> <p>20 <b>listen to my own video, so I don't know.</b></p> <p>21 Q. Okay. At least on this video it doesn't</p> <p>22 sound very clear?</p> <p>23 <b>A. No.</b></p> <p>24 (Video played.)</p> <p>25 Q. (BY MR. LUTZ) Okay. Pause right there at 27</p>
<p style="text-align: right;">Page 194</p> <p>1 Smith's camera?</p> <p>2 <b>A. Yes.</b></p> <p>3 (Video played.)</p> <p>4 Q. (BY MR. LUTZ) Paused at 11 minutes 1 second.</p> <p>5 The frame we paused on is not very good, but just a</p> <p>6 moment ago was that you leaning against the car?</p> <p>7 <b>A. Can you go back.</b></p> <p>8 Q. Yeah.</p> <p>9 <b>A. Sorry. I wasn't focused on that part.</b></p> <p>10 (Video played.)</p> <p>11 Q. (BY MR. LUTZ) Right there.</p> <p>12 <b>A. Yeah, that's me.</b></p> <p>13 (Video played.)</p> <p>14 Q. (BY MR. LUTZ) Paused at 11 minutes 30</p> <p>15 seconds. Do you recognize this gentleman in the yellow</p> <p>16 iridescent shirt?</p> <p>17 <b>A. His face is too blurry right there. I'm not.</b></p> <p>18 Q. You don't have any independent recollection</p> <p>19 of who that was?</p> <p>20 <b>A. No.</b></p> <p>21 Q. Okay.</p> <p>22 (Video played.)</p> <p>23 Q. (BY MR. LUTZ) Okay. Have you seen any</p> <p>24 versions of that video that are longer than what we</p> <p>25 just watched?</p>	<p style="text-align: right;">Page 196</p> <p>1 minutes 16 seconds. Have you been able to see up to</p> <p>2 this point the wires connected to the taser barbs from</p> <p>3 Officer Smith's taser on Mr. Harmon?</p> <p>4 <b>A. I can see what looks look wires. I don't</b></p> <p>5 <b>know if they're connected to the barbs or his taser. I</b></p> <p>6 <b>mean, yeah, that's clearly a wire there, but.</b></p> <p>7 Q. Okay.</p> <p>8 (Video played.)</p> <p>9 Q. (BY MR. LUTZ) Same thing. Does that right</p> <p>10 there paused at 220 look like a taser barb in</p> <p>11 Mr. Harmon's chest area?</p> <p>12 <b>A. Yeah, that looks like an actual barb.</b></p> <p>13 Q. So --</p> <p>14 <b>A. Yes.</b></p> <p>15 Q. -- this barb made contact with his chest</p> <p>16 area?</p> <p>17 <b>A. Looks like it.</b></p> <p>18 (Video played.)</p> <p>19 Q. (BY MR. LUTZ) Pause right there at 350. Up</p> <p>20 in the top left corner of the screen you see these two</p> <p>21 hands surrounding Mr. Harmon? What is that officer</p> <p>22 doing?</p> <p>23 MS. NICHOLS: Objection.</p> <p>24 <b>THE WITNESS: Can you -- can I -- yeah.</b></p> <p>25 Q. (BY MR. LUTZ) Play a little more?</p>

<p style="text-align: right;">Page 197</p> <p>1       <b>A.    Sure.</b></p> <p>2               (Video played.)</p> <p>3       <b>THE WITNESS: Yeah, that's a tourniquet.</b></p> <p>4       MR. LUTZ: Pause it right there at 354.</p> <p>5       Q.    (BY MR. LUTZ) That officer is applying a</p> <p>6   tourniquet to Mr. Harmon's thigh?</p> <p>7       <b>A.    It looks like it.</b></p> <p>8       Q.    Okay.</p> <p>9               (Video played.)</p> <p>10       Q.    (BY MR. LUTZ) Pausing again here at 4 minutes</p> <p>11   32 seconds. Right there, dead center of the frame,</p> <p>12   that's the same taser probe we were looking at, right,</p> <p>13   in the middle of Mr. Harmon's chest; right?</p> <p>14       <b>A.    I believe so.</b></p> <p>15       Q.    Okay. Play again.</p> <p>16               (Video played.)</p> <p>17       MR. LUTZ: Back 10 seconds. Again, playing it</p> <p>18   forward to 350, pay attention to where the taser barb</p> <p>19   is.</p> <p>20               (Video played.)</p> <p>21       MR. LUTZ: Right there.</p> <p>22       Q.    (BY MR. LUTZ) Did you see -- could you see</p> <p>23   the taser barb connected under his shirt into his skin?</p> <p>24       <b>A.    Yes.</b></p> <p>25       Q.    Okay.</p>	<p style="text-align: right;">Page 199</p> <p>1       Q.    You gave your first statement as to what</p> <p>2   happened on August 18th; is that right?</p> <p>3       <b>A.    If you're asking me, I don't know the actual</b></p> <p>4   <b>date. There's the paperwork if you want me to check</b></p> <p>5   <b>it, but I don't remember, yeah.</b></p> <p>6       Q.    Let's go back to the exhibit if I have it.</p> <p>7   Yeah, August 18th, 2017. I'm looking at SLCC121. Who</p> <p>8   did you talk to about what happened on the night of</p> <p>9   August 13th, 2017? Between that night and August 18th,</p> <p>10   2017.</p> <p>11       <b>A.    My attorney.</b></p> <p>12       Q.    That's it?</p> <p>13       <b>A.    That's it.</b></p> <p>14       Q.    Talk to your wife?</p> <p>15       <b>A.    I talked to my wife, but I didn't really want</b></p> <p>16   <b>her to know what had happened. So she knows that I was</b></p> <p>17   <b>involved in a shooting. She didn't know -- I didn't</b></p> <p>18   <b>know how anything was going to turn out, so kind of</b></p> <p>19   <b>wanted her to not know much.</b></p> <p>20       Q.    Okay. Did you talk to Officer Robinson?</p> <p>21       <b>A.    No.</b></p> <p>22       Q.    No phonecalls?</p> <p>23       <b>A.    No. So we met the day after. No phone</b></p> <p>24   <b>calls, no text. We didn't talk about the case.</b></p> <p>25       Q.    Okay. Text messages?</p>
<p style="text-align: right;">Page 198</p> <p>1               (Video played.)</p> <p>2       Q.    (BY MR. LUTZ) Okay. So you said you've seen</p> <p>3   that before. Have you seen any longer version of</p> <p>4   Officer Robinson's body cam footage from that night?</p> <p>5       <b>A.    No.</b></p> <p>6       Q.    The area where you encountered Mr. Harmon</p> <p>7   where all the officers and kind of Mr. Harmon is on</p> <p>8   State Street there, is that a relatively high crime</p> <p>9   area for this city?</p> <p>10       MS. NICHOLS: Objection.</p> <p>11       <b>THE WITNESS: I mean, if you go further -- it's</b></p> <p>12   <b>all relative. If you go further south, it's worse on</b></p> <p>13   <b>that particular spot. I mean, not really, but that</b></p> <p>14   <b>whole length of State Street is worse than other parts</b></p> <p>15   <b>of the city or state. It just depends on how far away</b></p> <p>16   <b>from it you get.</b></p> <p>17       Q.    (BY MR. LUTZ) Okay. Makes sense. And I</p> <p>18   don't mean -- to just clarify, I don't mean</p> <p>19   statistically. I just mean in your experience as an</p> <p>20   officer.</p> <p>21       <b>A.    That was the first time I'd ever been on that</b></p> <p>22   <b>block probably on any kind of stop.</b></p> <p>23       Q.    Okay. So the encounter with Mr. Harmon took</p> <p>24   place on August 13th, 2017; right?</p> <p>25       <b>A.    Yes.</b></p>	<p style="text-align: right;">Page 200</p> <p>1       <b>A.    No.</b></p> <p>2       Q.    What about with Officer Smith?</p> <p>3       <b>A.    Same thing.</b></p> <p>4       Q.    So you and Officer Robinson met the next day?</p> <p>5       <b>A.    All three of us did.</b></p> <p>6       Q.    Okay. What prompted that?</p> <p>7       <b>A.    They wanted to check and make sure I was</b></p> <p>8   <b>doing okay I think.</b></p> <p>9       Q.    Where did you guys meet?</p> <p>10       <b>A.    At my house.</b></p> <p>11       Q.    Okay. Who initiated that meeting?</p> <p>12       <b>A.    I think they did.</b></p> <p>13       Q.    Okay. Do you remember what time it was that</p> <p>14   they came over?</p> <p>15       <b>A.    Early morning. I don't remember what time.</b></p> <p>16       Q.    Just the three of you?</p> <p>17       <b>A.    Uh-huh.</b></p> <p>18       Q.    Okay. And you did not talk about this?</p> <p>19       <b>A.    Did not.</b></p> <p>20       Q.    Okay. In August of 2017 who else was on your</p> <p>21   squad at that time?</p> <p>22       <b>A.    Like I said, I know it was us three. There</b></p> <p>23   <b>was Josie and I know there was at least two others, but</b></p> <p>24   <b>I couldn't give you names.</b></p> <p>25       Q.    Okay. Who's Josie? Do you have a last name?</p>



<p style="text-align: right;">Page 201</p> <p>1 A. Oh. It was "Frout" at the time. She's since  2 married. I'm not sure. Collins. Sorry. I think her  3 last name's Collins now.  4 Q. We've talked about it many times, but you  5 never saw the knife you believe Mr. Harmon had at the  6 scene after you shot him?  7 MS. NICHOLS: Objection, asked and answered.  8 THE WITNESS: Sorry. Can I make one correction?  9 MR. LUTZ: Yeah.  10 THE WITNESS: I don't think Josie was actually on  11 my squad. She was on a covering squad. So we just  12 actually worked the same area, but she was for a  13 different sergeant. Sorry.  14 Q. (BY MR. LUTZ) Okay. No problem. I  15 appreciate the correction. What is a covering squad,  16 just for clarification?  17 A. So my sergeant at the time was Bret Hatch and  18 so I bid that shift and he's got certain days off;  19 right? So I'm assigned to that particular zone within  20 a beat, or the beat within a zone, and me, Kris and  21 Scott were all on the same squad, just bid different  22 beats, but same zone.  23 She worked for I believe it was actually  24 Sergeant Sweeny and happened to bid the same -- I think  25 she was the same beat as one of the three of us in the</p>	<p style="text-align: right;">Page 203</p> <p>1 after the fact, so.  2 Q. (BY MR. LUTZ) Is there a policy or procedure  3 that applies to that situation?  4 A. No, not that requires it.  5 Q. Okay. Would you ordinarily pat a suspect  6 down before handcuffing them and taking them into  7 custody?  8 MS. NICHOLS: Objection.  9 THE WITNESS: No.  10 Q. (BY MR. LUTZ) Would you pat them down after  11 you handcuff them and were taking them into custody?  12 A. Yes.  13 Q. What's the rationale for that, you doing it  14 after, but not before?  15 MS. NICHOLS: Objection.  16 THE WITNESS: I think a lot of it is, I mean,  17 dealer stories; right? If I wanted to try to do it  18 prior to, I could. My rationale would be if I can get  19 you into handcuffs sooner, then pat you down, any  20 potential for you to get weapons is negated by you  21 being in handcuffs. So, I mean, that's one potential  22 reason that you would potentially apply to it.  23 Q. (BY MR. LUTZ) Okay. I noticed in the body  24 cam footage that we watched earlier that you were  25 wearing glasses.</p>
<p style="text-align: right;">Page 202</p> <p>1 same zone, but she was actually for a different  2 sergeant. We just worked the same area. So we  3 frequently worked together the same area, but on the  4 same squad. Sorry.  5 Q. Okay. Do you know if any testing was done on  6 the knife recovered at the scene to determine the  7 presence of fingerprints?  8 A. I have no idea.  9 Q. And do you know if any testing was done on  10 the knife recovered at the scene to determine the  11 presence of any DNA?  12 A. I have no idea.  13 Q. Okay. Give me just a second. Want to take a  14 short break?  15 MS. NICHOLS: That's great.  16 3:53-406.  17 (Recess taken from 3:53 p.m. to 4:06 p.m.)  18 Q. (BY MR. LUTZ) On the night of the 13th of  19 August 2017 when you first arrived and contacted  20 Mr. Harmon, did you pat him down?  21 A. I did not.  22 Q. Did any of the other officers pat him down?  23 MS. NICHOLS: Objection.  24 THE WITNESS: At the time I had no idea if Kris  25 had prior to me getting there. Obviously nobody did</p>	<p style="text-align: right;">Page 204</p> <p>1 A. Yes.  2 Q. You're not today.  3 A. Uh-huh.  4 Q. Are you wearing contacts?  5 A. No.  6 Q. Lasik?  7 A. No.  8 Q. Just your vision's fine?  9 A. Yes.  10 Q. What's your prescription?  11 A. I am slightly nearsighted, so I use them to  12 read license plates and street signs.  13 Q. Okay. Do you know what numerically your  14 prescription is?  15 A. No. It's minor.  16 Q. Okay. You're not required to wear  17 prescription lenses to drive?  18 A. No.  19 Q. Okay. In your patrols today do you have  20 access to the Axon app on your phone?  21 A. Yes.  22 Q. And does that allow you to view body camera  23 footage immediately?  24 A. Yes.  25 Q. Did you have access to an app like that in</p>

<p style="text-align: right;">Page 205</p> <p>1 August of 2017?</p> <p>2 A. Not on my phone I don't think.</p> <p>3 Q. In some other capacity?</p> <p>4 A. I think if I plugged it into a computer, I</p> <p>5 could have watched it.</p> <p>6 Q. Okay. Have you ever done that?</p> <p>7 A. I think I've viewed body camera before, yeah.</p> <p>8 Q. And there was no prohibition on it by policy</p> <p>9 of just plugging in and watching your own body cam</p> <p>10 footage?</p> <p>11 A. There was no what?</p> <p>12 Q. Prohibition.</p> <p>13 A. No. I think it was actually encouraged.</p> <p>14 Q. Okay. Have you ever been to Price, Utah?</p> <p>15 A. Probably -- I don't know. Honestly. I don't</p> <p>16 know where Price is.</p> <p>17 Q. You never lived in Price, Utah?</p> <p>18 A. No.</p> <p>19 Q. Did your wife?</p> <p>20 A. No.</p> <p>21 Q. Do you know anyone who's ever worked in</p> <p>22 Price, Utah?</p> <p>23 MS. NICHOLS: Objection.</p> <p>24 THE WITNESS: No.</p> <p>25 Q. (BY MR. LUTZ) To your knowledge, do you know</p>	<p style="text-align: right;">Page 207</p> <p>1 THE WITNESS: Yes.</p> <p>2 Q. (BY MR. LUTZ) In your training and</p> <p>3 experience?</p> <p>4 A. Yes.</p> <p>5 Q. Now, I know we talked about totality of the</p> <p>6 circumstances and the context of independent responses;</p> <p>7 right? That's a big part of your training. But is</p> <p>8 deadly force called for at any time that you're going</p> <p>9 to encounter a suspect with a knife?</p> <p>10 MS. NICHOLS: Objection.</p> <p>11 THE WITNESS: No.</p> <p>12 Q. (BY MR. LUTZ) Okay. What are the core values</p> <p>13 at the Salt Lake City Police Department?</p> <p>14 MS. NICHOLS: Objection.</p> <p>15 THE WITNESS: I have no idea. I think they all</p> <p>16 start with Cs for some ease of reference, but I don't</p> <p>17 remember them.</p> <p>18 Q. (BY MR. LUTZ) After the incident, the Patrick</p> <p>19 Harmon incident, were you put on -- were you removed</p> <p>20 from patrol?</p> <p>21 A. I mean, if the question is whether I was put</p> <p>22 on administrative leave, yes.</p> <p>23 Q. Okay. And what did administrative leave</p> <p>24 entail?</p> <p>25 A. Like as far as?</p>
<p style="text-align: right;">Page 206</p> <p>1 anyone whose ever worked for Castlevew Hospital?</p> <p>2 MS. NICHOLS: Objection.</p> <p>3 THE WITNESS: No.</p> <p>4 Q. (BY MR. LUTZ) Have you ever worked for</p> <p>5 Castlevew Hospital?</p> <p>6 A. No.</p> <p>7 Q. Has your wife ever worked for Castlevew</p> <p>8 Hospital?</p> <p>9 A. No.</p> <p>10 Q. Do you have any idea if either Officer</p> <p>11 Robinson or Officer Smith worked for Castlevew</p> <p>12 Hospital at any point in time?</p> <p>13 A. I have zero idea.</p> <p>14 Q. Okay. The moment Mr. Harmon took off, why</p> <p>15 didn't you try a taser?</p> <p>16 A. I thought I was going to be able to get to</p> <p>17 him and tackle him.</p> <p>18 Q. If that's the case, then why did you draw</p> <p>19 your gun?</p> <p>20 A. Because he said he was going to cut Scott and</p> <p>21 then started reaching for his pocket, so I believed he</p> <p>22 was armed with something that would cut somebody.</p> <p>23 Q. And in that situation, that calls for deadly</p> <p>24 force?</p> <p>25 MS. NICHOLS: Objection.</p>	<p style="text-align: right;">Page 208</p> <p>1 Q. What were you doing at work?</p> <p>2 A. So for the first few weeks, nothing.</p> <p>3 Q. Were you at work at all?</p> <p>4 A. I was required to check in every day, and I</p> <p>5 would check in at the beginning of the day and check</p> <p>6 off at the end of the day.</p> <p>7 Q. Literally nothing between?</p> <p>8 A. Literally nothing in between. I was -- I was</p> <p>9 meant to be the head of the immediate response of the</p> <p>10 department. I was at will to them any time they needed</p> <p>11 me between those hours, but I did nothing. I worked</p> <p>12 out quite a bit.</p> <p>13 Q. Okay. When did you come off administrative</p> <p>14 leave? Go ahead.</p> <p>15 A. Sorry. That was only for one week.</p> <p>16 Q. Okay.</p> <p>17 A. I actually went to a training that I had</p> <p>18 signed up for prior to that at the beginning of the</p> <p>19 second, roughly, the second week of my leave. So I</p> <p>20 actually did, but that was only for about a week that I</p> <p>21 did it, and then I started the training.</p> <p>22 Q. What was the training on?</p> <p>23 A. Basic narcotics investigation.</p> <p>24 Q. Do you have any regrets about what happened</p> <p>25 with Mr. Harmon?</p>

Page 209

1 MS. NICHOLS: Objection.  
 2 **THE WITNESS: Yes.**  
 3 MR. LUTZ: Okay. That's all I have. Thank you  
 4 for being here today.  
 5 **THE WITNESS: Thank you.**  
 6 MS. NICHOLS: I have no questions. The witness  
 7 would like to read and sign, please.  
 8 (The proceedings ended at 4:15 p.m.)

9 - - -

Page 211

WITNESS CERTIFICATE

1 I, CLINTON FOX, HEREBY DECLARE:  
 2  
 3 That I am the witness referred to in the  
 4 foregoing deposition, and that I have read the  
 5 foregoing deposition testimony and have made any  
 6 changes/corrections I deem necessary below and  
 7 together the same truly and accurately reflect my  
 8 testimony.

9 PAGE-LINE:	CHANGE/CORRECTION	REASON:
10 _____	_____	_____
11 _____	_____	_____
12 _____	_____	_____
13 _____	_____	_____
14 _____	_____	_____
15 _____	_____	_____
16 _____	_____	_____
17 _____	_____	_____
18 _____	_____	_____

10 \_\_\_\_\_  
 11 \_\_\_\_\_  
 12 \_\_\_\_\_  
 13 \_\_\_\_\_  
 14 \_\_\_\_\_  
 15 \_\_\_\_\_  
 16 \_\_\_\_\_  
 17 \_\_\_\_\_  
 18 \_\_\_\_\_

19 I, CLINTON FOX, hereby declare under the penalties  
 20 of perjury of the laws of the United States of America  
 21 and the laws of the State of Utah that the foregoing is  
 22 true and correct.

23 DATED \_\_\_\_\_, 20\_\_\_\_.

24 \_\_\_\_\_  
 CLINTON FOX

25

Page 210

1 STATE OF UTAH )  
 ) ss.  
 2 COUNTY OF SALT LAKE )  
 3 REPORTER'S CERTIFICATE  
 4 I, Amanda Richards, certified shorthand reporter  
 5 for the State of Utah, certify:  
 6 That the deposition of the witness herein was  
 7 taken before me at the time and place herein set forth,  
 8 at which time the witness was by me duly sworn to  
 9 testify the truth; that the testimony of the witness  
 10 and all objections made and all proceedings had of  
 11 record at the time of the examination were  
 12 stenographically reported and transcribed by me.  
 13 That the foregoing transcript, as transcribed by  
 14 me, is a full, true and correct record of my  
 15 stenographic notes so taken; that review of the  
 16 transcript by the witness was requested pursuant to  
 17 Rule 30(e) of the Utah Rules of Civil Procedure.  
 18 I further certify that I am neither counsel for  
 19 nor related to any party to said action, nor in anywise  
 20 interested in the outcome thereof.  
 21 IN WITNESS WHEREOF, I have subscribed my name  
 22 below this 5th day of July 2022.

23 Amanda Richards

24 Amanda Richards, CSR  
 25